TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

[illegible]

No. [illegible]

THE CENTRAL STOCK YARDS COMPANY, APPELLANT

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY

[illegible]

[illegible]

(18,710.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 482.

THE CENTRAL STOCK YARDS COMPANY, APPELLANT,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1902.

road Company, which it alleges is and was at the times hereinafter mentioned, and has been for many years a railroad company organized and existing under and by virtue of the laws of the State of Kentucky, with power to contract and be contracted with, sue and be sued in said corporate name; that said defendant, The Louisville and Nashville Railroad Company, is a citizen and resident of the State of Kentucky.

2. That this suit is between citizens of different States, viz., The Central Stock Yards Company, a citizen of the State of Delaware, and The Louisville and Nashville Railroad Co., a citizen of the State of Kentucky, and that the amount in controversy as will be hereinafter fully shown and set forth, exceeds the sum or value of two thousand dollars exclusive of interest and costs, and that the acts hereinafter complained of and fully set forth are in violation of the Constitution and laws of the United States and — arising thereunder and more particularly in violation of the 3d section of an act of the Congress of the United States, known as "An act to regulate commerce," passed February 4, 1887, and amendments thereto.

3. Plaintiff says that it has constructed a live-stock plant fully equipped with the latest improved and best facilities for, and is now engaged in, receiving, unloading, feeding, watering, caring for, weighing, having sales made of, and reloading live stock that may be consigned to it for care, attention and sale; that its stock yards are on the line of the Southern Railway Company, in Kentucky, in Jefferson county, Kentucky, about nine miles from the terminus of said railway in the city of Louisville; that the said railway company in Kentucky is a duly created, organized and operating railway system in Kentucky under the laws of said State, and that plaintiff's said stock yard has by said Southern Railway Company been duly and regularly established, and now is, a station on the line of said Southern Railway Company in Kentucky, known as "Central Stock Yards, Kentucky," and that said Southern Railway Company has heretofore duly and regularly given notice of the establishment
3 of said station to its agents and all connecting railways and common carriers in Kentucky. Plaintiff says that it (Central Stock Yards Company), is engaged in the stock-yards business, and has ample capital, premises and facilities in every way to carry on properly and economically a stock yard for the reception of shipments of stock, for the sale of same, and for feeding, watering, and caring for, and giving all proper attention thereto while in its custody. Plaintiff further says that it with the Southern Railway Company in Kentucky, has in operation all necessary switches, tracks, platforms, and chutes connecting its said yard with said railway system, and has modern and of the best facilities for receiving, and unloading live stock of every description and in any quantity that may be consigned to it. That said Southern Railway Company has heretofore notified all railways and common carriers including the defendant, The Louisville and Nashville Railroad Company, entering the said city of Louisville, that it, the Southern Railway Company, would be, after November 1, 1901, have ever since been, and that it

is now ready, willing and able to accept at points of physical connection with said Louisville and Nashville Railroad Company, and all other railway companies and common carriers, live stock entering the city of Louisville, consigned to any and all persons at its station, Central stock yards, Kentucky, on its line aforesaid in Jefferson county, Kentucky, and that it would be and is now willing to be responsible from such points of connection, for the delivery of such live stock, and the collection of all charges on same, and would promptly return to such points of connection all empty cars and account for all freight charges collected in the usual way.

4. Plaintiff says that defendant, The Louisville and Nashville Railroad Company, is and was at the times hereinafter mentioned, and has been for many years a railroad corporation created and organized and existing under and by virtue of the laws of the State of Kentucky, with power in its corporate name to contract and be contracted with, sue and be sued, and to conduct and operate a steam railroad in and through Kentucky and elsewhere, with its chief office and terminus in Louisville, Kentucky; that it is so operating and maintaining such road in Kentucky and elsewhere, viz., Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida, Indiana and Illinois, and is a common carrier engaged in the transportation
4 of passengers and property wholly by railroad along some of its lines, and partly by railroad and partly by water on other of its lines under a common control, management and arrangement for a continuous carriage and shipment from one State of the United States to another State of the United States.

Plaintiff further says that the Southern Railway Company in Kentucky has at Louisville, Ky., at least three points of physical connection between its tracks and the tracks of the defendant, Louisville & Nashville Railroad Company, which are known respectively as the Bergen & Meehan switch or connection, the Fourth Avenue connection and the Seventh and Magnolia Streets connection. The Bergen & Meehan Co. switch is at the intersection of the said Southern Railway Company's tracks and the tracks of the said Louisville & Nashville Railroad Company at or near Floyd street, or between Floyd and Brook streets, and is about fourteen hundred and seventy-five (1475) feet in length. It says that about nine hundred and seventy-five (975) feet of said Bergen & Meehan switch or siding and physical connection between the tracks of said Southern Railway Company in Kentucky and the tracks of the defendant Louisville & Nashville Railroad Company are owned by the Southern Railway Company in Kentucky, and about five hundred (500) feet of said switch or siding and physical connection is known as the Bergen & Meehan private switch, but that the defendant Louisville & Nashville Railroad Company, has the right to and does use said Bergen & Meehan five hundred (500) feet of said siding or switch, and same forms a connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the defendant Louisville & Nashville Railroad Company, and is only about twenty-two hundred (2200) feet in trackage from plaintiff's plant and the station in Jefferson county, Kentucky, on the line of the Southern Railway Company in

Kentucky, known as Central stock yards, Kentucky; that the Fourth Avenue connection is only about one hundred and twenty-eight (128) feet in length, and is about equally owned by the defendant Louisville & Nashville Railroad Company and the Southern Railway Company in Kentucky, and is about half a mile from plaintiff's plant, and the station in Jefferson county, Kentucky, on the line of the Southern Railway Company in Kentucky, known as Central stock yards, Kentucky; that the Seventh and Magnolia Streets connection consists of a track in length about twenty-four hundred and fifty-
5 four (2454) feet with siding in connection therewith in length about eleven hundred and seventy-two (1172) feet; that upon said main-track connection and siding there can be handled about seventy-four (74) cars at one time of interchanged traffic of the one railway company or system with the other, and that said point of physical connection is only about one mile and a half from plaintiff's plant and the station in Jefferson county, Kentucky, on the line of the Southern Railway Co. in Kentucky, know- as Central stock yards, Kentucky; and that at said three points of physical connection between the tracks of the said Southern railway and the tracks of the Louisville & Nashville Railroad Company, the said two railway systems have heretofore received and delivered, and are now receiving and delivering each one to the other, and from the other, freight, other than live stock consigned to Central stock yards, in car-load lots and less for delivery to consignees on the track or tracks of one or the other.

6. Plaintiff says that the defendant, The Louisville and Nashville Railroad Company, is a common carrier as aforesaid, of passengers and freight of all kinds and descriptions, and by the Constitution and laws of the United States, and particularly by the "act" of the Congress of the United States approved February 4, 1887, and known as the "Act to regulate commerce," and especially the 3d section thereof, it is made unlawful for any interstate common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever, and such carrier is required to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

7. Plaintiff says the Louisville and Nashville Railroad Company has announced its intention and purpose to refuse to receive, bill, transport, transfer, switch or deliver any live stock—the shipment of which originates outside of the State of Kentucky—con-
6 signed or tendered to be consigned to any point of physical connection between the said line and the line of the Southern

Railway Company in Kentucky, destined to the Central Stock Yards station, Ky., or to the Central stock yards, Kentucky, or any such live stock consigned to any individual, partnership, firm or corporation at said Central stock yards, Ky., or at said Central Stock Yards station, Ky., or via the Southern Railway Company in Kentucky, destined to said yard or station—and that it has so instructed its agents and employés all along its lines; and that in accordance with said announced intention and purpose and instructions given, it has for the last two months failed and refused, and now fails and refuses to receive, bill, transport, transfer, switch or deliver any such stock as consigned or tendered to be so consigned for shipment, although during said time, from day to day, live-stock shipments originating out of the State of Kentucky have been tendered defendant from connecting lines and other common carriers and shippers consigned to said Central stock yards, Ky., and to said Central Stock Yards —, Ky., and to individuals, firms, partnerships and corporations at said Central stock yards, Ky., and at said Central Stock Yards —, Ky., and to said stock yards and station via the Southern Railway Company in Kentucky.

8. Plaintiff further says that as to such interstate shipments so tendered or consigned, defendant has continuously failed and refused to receive, bill, transport, transfer, switch or deliver same to said Southern Railway Company in Kentucky, for delivery at said Central stock yards or station, but on the contrary, against the known wishes and requests of the consignors, has billed all live stock so tendered or consigned, to Louisville, Ky., and delivered same at the Bourbon stock yards in Louisville, Ky., and has failed and refused to permit the consignor and consignee conjointly to change the destination of such shipments, when they reached the break-up yards of defendant in South Louisville, Ky., and have same switched and transferred to the Southern Railway Company in Kentucky, for delivery at Central stock yards, Central Stock Yards station, Ky., although so requested—where defendant knew the consignees were, and both consignor and consignee desired the delivery made, although to have thus changed the destination would have been less inconvenient or burdensome to defendant, than to have taken said shipments from its break-up yards to the Bourbon stock
7 yards, which would make a difference in the haul of some five or six miles, and for which defendant would not receive any additional pay or compensation.

Plaintiff further states that on December 21, 1901, at Columbia, Tennessee, a regularly established station on the Louisville & Nashville Railroad Co., Allen Bros., customers of Hart, McCampbell & Co., commission merchants and brokers doing business at the Central stock yards with offices located at said yards, tendered to the agents and employés of the Louisville and Nashville Railroad Company at said station at Columbia, Tenn., a car-load of cattle which were loaded in Louisville & Nashville, car 18726, and billed to Allen Bros., Louisville, Ky., care of Hart, McCampbell & Co., Louisville, Ky.; that before receiving and billing said car-load of stock, said Allen Bros., demanded of the Louisville & Nashville Railroad Com-

pany, that said company receive, bill, transport, transfer, switch and deliver the said car-load of cattle to the Southern Railway Company, at Louisville, Ky., at one of the points of physical connection between the tracks of the Southern Railway Company and the tracks of the defendant, The Louisville and Nashville Railroad Company, for delivery by the Southern Railway Company at Central stock yards, Central Stock Yards station, Ky., care of Hart, McCampbell & Co., but the defendant The Louisville & Nashville Railroad Co., neglected, failed and refused to so bill the said stock and would not bill same otherwise than as stated, that is, to the said Allen Bros., care of Hart, McCampbell & Co., Louisville, Ky.

Plaintiff further says that said Allen Bros., immediately upon receiving the bill of lading for said car, forwarded same to said Hart, McCampbell & Co., and wired them requesting them to demand that said car-load of cattle should be stopped and unloaded at the Central stock yards, Central Stock Yards station, Kentucky.

Plaintiff further says that upon receipt of said telegram, and acting upon the instructions of the consignor, said Hart-McCampbell & Co., consignees did on the 22d day of December, 1901, before said car reached South Louisville, the break-up yards of the Louisville & Nashville Railroad Company, give written notice and requested of the agent, one J. F. Coady, the agent at said place, of the Louisville & Nashville Railroad Company, to change the destination of said car from Allen Bros., Louisville, Ky., care of Hart-Mc-
8 Campbell & Co., to Central stock yards, Central Stock Yards station, Ky., via the Southern Railway Co., Louisville, Ky., but that said agent refused to change the destination of said car as requested, and announced his purpose to, and thereafter did make delivery of the said car-load of cattle at the Bourbon stock yards, and informed plaintiff that the Louisville and Nashville Railroad Company had directed him that any and all live stock that should arrive at South Louisville over the lines of the Louisville & Nashville Railroad Company, and billed to any person at Louisville, Ky., would only be delivered at the Bourbon stock yards, and that the said defendant would refuse to recognize the right or rights of any shipper, owner or consignee of live stock to direct any change in its destination, that is as to all stock, the shipment of which originated outside of the State of Kentucky.

9. Plaintiff further says that on the 20th day of September, 1888, a contract was entered into between the Louisville and Nashville Railroad Company, first party, and the Bourbon Stock Yards Co., second party, and that by the fourth section of said contract, said parties agreed and contracted with each other as follows:

"4. First party agrees that it will not lease, rent or sell any of its ground in the city of Louisville, for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said city, and it will establish no other stock depot in said city, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the roads of the first party and consigned to the city of Louisville, and should any live stock be shipped to other person or persons in said city, the

first party hereby makes and agrees to make the stock yards of the second party the stock depot of the first party for said city, and agrees to unload all live stock shipped to said city at the address of the second party, but if the provisions of this section of this contract be abrogated or invalidated by judgment of any court, or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions, and the second party shall at its own cost and expense defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom."

Plaintiff says that in order to carry out said contract or its part, the Louisville & Nashville Railroad Company has ever since
9 the Central Stock Yards Company began operation, continuously and persistently done everything in its power to divert the shipment of stock from said Central Stock Yards Co., and has continuously and persistently refused to receive, bill, transport, transfer, switch, or deliver either intra or inter state stock coming over its lines consigned to the Central stock yards, Ky., or Central Stock Yards station, Ky., or to any individual, firm or corporation at said yards or station, to the Southern Railway Company in Kentucky, for delivery at said yards or station, and that it only began to deliver such intrastate stock after an injunction had been obtained in the State court requiring it to do so, but that as to the interstate stock it still refuses to receive, bill, transport, transfer, switch or deliver same as stated; that said action on the part of the defendant, The Louisville and Nashville Railroad Company, is unlawful and makes and gives an undue and unreasonable preference and advantage to the Bourbon Stock Yards Company over the Central Stock Yards Company, and is an undue and unreasonable prejudice and disadvantage to the said Central stock yards, and that said action on the part of the defendant, The Louisville and Nashville Railroad Company is had and done for said purpose, and in order to break down the said Central Stock Yards Company, and to build up and sustain the said Bourbon Stock Yards Company and for this reason alone.

Plaintiff further says that the unlawful and unauthorized refusal of defendant to receive, bill, transport, transfer, switch and deliver said live stock so tendered or consigned, has greatly damaged the plaintiff, and is a violation of the Constitution and laws of the United States, and especially the act to regulate commerce passed by the Congress of the United States, and approved February 4, 1887, and amendments thereto, and that all of said action on the part of said defendant, The Louisville and Nashville Railroad Company, is an unjust, unauthorized and unlawful discrimination against this plaintiff, and unless restrained and prevented, and unless defendant is required to receive, bill, transport, transfer, switch and make delivery of said live stock as ordered by the consignor, or as, after shipment, ordered by the consignor or consignee, or owners, great and irreparable injury and damage will result to plaintiff and its stock yard.

10. Plaintiff says that it has invested in its plant about $200,000 and has connected therewith a number of leading commission
10 houses most of whom have their offices at said plant, and are engaged in selling and purchasing, from day to day, live

stock at said yards, and that a large number of customers throughout the State of Tennessee and elsewhere have expressed the purpose of doing business at said yards with said commission merchants, and have endeavored to have their stock consigned to said merchants and the plaintiff, and consigned to themselves at said yards for sale by such commission houses, and for care and attention and feeding by plaintiff, but that they have been prevented from doing so by the wrongful and unlawful failure and refusal of defendant, The Louisville and Nashville Railroad Company, to receive, bill, transport, transfer, switch and deliver same when said stock is so tendered, and they are requested so to do and that said defendant still refuses and fails to handle said stock otherwise than as stated hereinbefore.

Plaintiff further says that the railway system of the defendant, The Louisville and Nashville Railroad Company, extends through and over a large portion of the cattle and live-stock raising sections of Tennessee, and of several other Southern States, and that in order to reach the Central stock yards, one of the natural markets for said stock, it must necessarily pass over the lines of said defendant's road, and that by reason of the wrongful and unlawful action of the said Louisville and Nashville Railroad Company, and by reason of the discrimination against plaintiff as aforesaid all of said shippers, customers and patrons of plaintiff and of the numerous commission merchants doing business at said Central stock yards, are required and compelled by the Louisville and Nashville Railroad Company, to consign their said stock as directed by the said Louisville & Nashville Railroad Company, and to have same delivered at a stock yard other than that of plaintiff and other than the one at which such consignors and shippers desire said stock to be delivered; that is, at the Bourbon Stock Yards Company, Kentucky; and that such arbitrary, unlawful and oppressive conduct and discrimination on the part of defendant against plaintiff and the shippers and dealers in live stock along its lines, and the announced purpose and expressed intention of defendant by written as well as verbal instructions to its agents, and by its conduct as aforesaid, and by its declared intention, to plaintiff, to continue to so fail, neglect and refuse to receive, bill,
transport, transfer, switch or deliver such interstate live stock
11 destined to the Central stock yards, or to deliver same to the
Southern railway at any of the points of physical connection, to be delivered by it at the Central stock yards, or at Central Stock Yards station, unless immediately restrained and prevented, will cause great and irreparable injury and damage to plaintiff and its business, resulting in its disruption and destruction.

Plaintiff says that next Monday, the 13th day of January, is its regular sale day, and in fact, the principal sale day of the week, and that most of the dealers in live stock throughout the country at large, make shipments of such stock along the lines of road over which it comes so that it may arrive at the stock yards on Saturday or Sunday preceding the principal sale day on Monday, and that plaintiff has received notice and knows of a number of interstate shipments that will arrive over the lines of the Louisville and Nashville railroad between now and Monday morning, and which

are desired by the shippers to be delivered to the Central Stock Yards station, and that unless an immediate restraining order and mandatory order of injunction be granted herein without notice, requiring and compelling said defendant to so receive, bill, transport, transfer, switch and deliver to such interstate stock destined to the Central stock yards or said station, great and irreparable injury will be done plaintiff in its business.

11. Plaintiff says it has no adequate or ample remedy at law for the injury to its business inflicted as aforesaid, and threatened and complained of as hereinbefore alleged, and that if required to institute an action for damages upon each and every refusal of the defendant to receive, bill, transport, transfer, switch or deliver such interstate live stock, great delay will be occasioned to the shippers and dealers in live stock and the plaintiff in receiving the same for sale and by the failure of plaintiff to receive the said live stock for care and attention and feeding thereof, great damage will be done to plaintiff, and suffering inflicted upon said stock, and the business of plaintiff will be disrupted and totally ruined, and separate and distinct actions will be wholly inadequate to the injury so inflicted.

Plaintiff further says that the said failure and refusal of defendant as aforesaid to receive, bill, transport, transfer, switch or deliver the said stock has resulted in great and irreparable injury to plaintiff's business, and that it has been damaged thereby in the sum of at least three thousand dollars ($3000.00), and if defendant car-
12 ries out its announced purpose and expressed intention to continue in such refusal, plaintiff will be damaged in the sum of at least fifty thousand dollars ($50,000).

12. Plaintiff further states that the injunction herein sought and prayed for has never been refused by this court, or by any judge of this court, or any circuit or district judge or justice of this court.

Wherefore, the plaintiff prays that the defendant, The Louisville and Nashville Railroad Company, be, by mandatory order of injunction, immediately ordered and required to receive, bill, transport, transfer, switch and deliver any and all shipments of live stock tendered to it outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between its said line and the line of the Southern Railway Company in Kentucky, destined to the Central Stock Yards station, Ky., or to the Central stock yards, Ky., or any such live stock consigned to any individual, partnership, firm or corporation at said Central stock yards, Ky., or at said Central Stock Yards station, Ky., or via the Southern Railway Company in Kentucky, destined to said yards or station, and that it also be required, whenever so requested by the consignor and consignee or owner of said stock, at any of its stations, to recognize the right of said parties to change the destination of said shipment; and that it be required to change said destination and make delivery thereof at any one of the points of physical connection between the tracks of said defendant's line and the tracks of the Southern Railway Company in Kentucky, for delivery by the said Southern Railway Company at the Central Stock Yards station, Ky., or to whomsoever there consigned; and further prays that until

notice is given and hearing had upon the application for an injunction, *that* this honorable court grant unto plaintiff a restraining order as herein prayed, and to be effective until this honorable court can make decision upon the said motion for an injunction, and plaintiff prays for a judgment herein against the defendant for the sum of three thousand dollars ($3000), and upon final hearing, for a perpetual injunction as prayed herein, and for all such other necessary and proper relief, the premises considered.

May it please your honors to grant unto plaintiff a writ of subpœna to be issued from the clerk's office of this court, directed to the said Louisville and Nashville Railroad Co., and commanding it to appear herein upon a day named therein, and full and true
13 answer make to complainant's bill, but not under oath, answer under oath being waived, and your complainant will forever pray.

DODD & DODD,
W. M. SMITH,
Att'ys for Plaintiff.

UNITED STATES OF AMERICA, }
Western District of Kentucky, } *sct:*

On this the 11th day of January, 1902, before me, personally appeared B. H. Hurt, who says that he is the chief officer and president of the plaintiff, The Central Stock Yards Company, and made solemn oath that he had read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

B. H. HURT.

Subscribed and sworn to before me by B. H. Hurt, this 11th day of January, 1902.

HENRY F. CASSIN,
U. S. Com'r.

And on another day of said term of said court, to wit, on the 13th day of January, 1902, came The Central Stock Yards Company, by counsel, and moves the court upon its verified petition herein, that this honorable court issue against the defendant, Louisville & Nashville Railroad Company, a mandatory order of injunction ordering and directing the said defendant, Louisville & Nashville Railroad Company, to receive, when tendered to it by any owner or consignor, or connecting common carrier, any and all live stock and to immediately bill, transport, transfer, switch and deliver the same as so ordered by such owner or consignor of any live stock to any point of physical connection between the tracks of the said Louisville & Nashville Railroad Company and the tracks of the Southern Railway Company in Kentucky at Louisville, Kentucky, for delivery by said Southern Railway Company to Central stock yards, Central stock yards, Kentucky, or any individual, partnership, firm or cor-

poration at said Central stock yards, Central stock yards, Kentucky, as ordered by such owner or shipper, and that whenever so requested by the consignor, consignee or owner of any live stock at any of its established stations that said defendant, Louisville
14 & Nashville Railroad Company, be ordered and directed to recognize the right of said consignor, consignee or owner to change the destination of such shipment of live stock to Central stock yards, Central stock yards, Kentucky, or any person, firm partnership or corporation doing business thereat, upon the payment of the usual and customary freight charges on such consignment to Louisville, and that said defendant, Louisville & Nashville Railroad Company, be required to change the said destination when so requested and make immediate delivery thereof to the Southern Railway Company in Kentucky, and at one of the points of physical connection between the tracks of the said Southern Railway Company in Kentucky, at Louisville, Kentucky, and the tracks of the said defendant, Louisville & Nashville Railroad Company, for delivery by the said Southern Railway Company to Central stock yards, at Central stock yards, Kentucky, or to whomsoever there consigned.

It is ordered that said motion be set for hearing January 15th, 1902.

And on another day of said term of said court, to wit, on the 15th day of January, 1902, came the parties by their counsel. The complainant, by leave of court, filed an amended bill herein. Came the defendant, by counsel, and filed the affidavit of Walker D. Hines and one exhibit, and by consent of parties it is ordered that the complainant's motion for a temporary injunction herein be set for hearing January 17, 1902.

The amended bill above referred to is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Amended Bill.

And now comes the plaintiff, and with leave of the court first had and obtained, amends its bill of complaint herein as follows:
15 1. Your orator, The Central Stock Yards Company, respectfully represents to this honorable court that since the enactment by the Congress of the United States of the act known as "An act to regulate commerce," passed February 4th, 1887, and amendments thereto, the Commonwealth of Kentucky has, by constitutional provisions and legislative enactments, in aid of commerce, imposed certain duties upon all common carriers, and that by mandatory self-executing constitutional requirements of the Commonwealth of Kentucky all railroad companies organized under the

laws of Kentucky, or operating, maintaining or controlling any railroad, or doing a railroad business in this State, are required to receive, transfer, deliver and switch empty or loaded cars, and to move, transport, receive, load or unload all freight in car-loads or less quantities coming to or going from any railroad, transfer, belt line, bridge or siding thereon with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback, or rebate in favor of any person, corporation, consignee or consignor in any matter as to *payment, transportation, handling or delivery*, and that all railroad companies doing business in this State shall so receive, deliver, transfer and transport all freight from and to any point where there is a physical connection between the tracks of said companies; and further, under the constitution and laws of the State of Kentucky, it is made unlawful for any railway, transfer, belt line or railway bridge company to make any exclusive or preferential contract or arrangement with any individual, association or corporation for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier, and that the acts and conduct of the defendant complained of in its original bill are in violation of the constitution and laws of the State of Kentucky, and it pleads and relies thereon in aid of the act of Congress of the United States, and known as "An act to regulate commerce."

Wherefore, the plaintiff prays as in its original bill, and for all such other necessary and proper relief the premises considered.

DODD & DODD,
W. M. SMITH,
Attorneys for Plaintiff.

16 The affidavit of Walker D. Hines, above referred to, is as follows:

United States Circuit Court, Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Walker D. Hines, being duly sworn, says: I am the first vice-president of The Louisville & Nashville Railroad Company, defendant in the above-styled action.

I file herewith as a part hereof a true and complete copy of the contract between the Louisville & Nashville Railroad Company and the Bourbon Stock Yards Company, which is referred to, and a part of which is quoted, in the bill of complaint in the above-entitled cause.

The facts as to that contract, and the consideration leading to its execution and observance are as follows:

At a place, such as the city of Louisville, it is absolutely essential to the proper management and handling of business that a railroad company handling a large amount of live stock, either bringing it to the Louisville market or taking it from that market, should have

a regular live-stock depot provided with facilities for handling and taking care of that peculiar species of property. Live stock need peculiar attention. They suffer from heat and cold and from hunger and thirst. They have to be fed and watered at regular intervals to keep them from suffering and to preserve them in good condition. They are liable, when large numbers of them are placed in cars, as it a necessity, to get down and be trampled upon, a liability which, of course, increases the longer they stay confined in one car or other place. *Moreover, certain kinds of live stock suffer* very greatly from extreme heat or extreme cold. In very hot weather it is of the greatest importance in handling such live stock to unload them from cars as quickly as possible and throw water upon them in order to reduce their bodily heat. The longer they stay in cars in which they have been transported the more liable do they become to injury from any of the causes above mentioned. In other words, when such stock reaches its destination, it is essential that it be delivered and unloaded not only carefully, but
17 quickly, in order to prevent injury and distress.

In the respects aforesaid live stock differs very essentially from dead freight as to the manner in which it is required to be handled. Dead freight, except that special class known as perishable freight, can ordinarily stand loaded in a car on a side track for hours at a time without injury or impairment, awaiting a time when it can be conveniently handled and delivered without interfering with or endangering the handling of other traffic by the railroad company having charge of the same. While, therefore, special deliveries of dead freight at different side tracks in the city of Louisville may often be made without inconvenience to any one, yet it would be a very great inconvenience for a railroad company handling live stock to be compelled to make special deliveries of live stock, in such manner as it is essential to make it if made at all.

Owing to considerations of the kind heretofore stated the Louisville & Nashville Railroad Company many years ago made the contract above mentioned, and has always insisted upon making deliveries of live stock for the Louisville market only at its live-stock depot, established by that contract, and that is what it is doing today; and it is its refusal to depart from that custom, and to violate the provisions of that contract, which has given rise to this present suit. Defendant has not in any way discriminated against the complainant, The Central Stock Yards Company. It has always refused, and now refuses, to deliver live stock destined for the Louisville market, whether consigned to complainant or to any other person natural or artificial, at any other place than at the live-stock depot of defendant as established by the aforesaid contract. It has steadfastly refused to make special deliveries of live stock destined for the Louisville market, at any switch or siding for any person. And its right to make such contracts and to perform them have been upheld both by the Supreme Court of the United States (Covington Stock Yards Co. *v.* Keith, 139 U. S.) and by the United States circuit court of appeals (Butchers', &c., Stock Yards Co. *vs.* L. & N. R. Co., 67 Fed. Rep.).

The effect of said contract is simply that the Louisville & Nashville Railroad Company establishes its live-stock depot at the Bourbon stock yards and agrees not to receive or deliver live stock for the Louisville market at any other place. It is true that the stock yards of the complainant are just a few feet outside of the limits of
18 the city of Louisville, but to all intents and purposes it is the same as if it were situated within the city limits. It is intended as a stock yards for the Louisville market, and is operated as such. *It is also true technically that the complainant*, The Central Stock Yards Company, is not demanding a technical delivery at its yards by the Louisville & Nashville Railroad Company, because the said Central stock yards are not located on a track of the Louisville & Nashville Railroad Company, but the complainant is demanding that the Louisville & Nashville Railroad Company when its cars containing live stock for the Louisville market reach the city of Louisville, it shall switch such cars out of the regular course which would take them to defendant's live-stock depot, and carry them to a side track making connection with the Southern railway, and there make a delivery of them to the Southern railway, to be thence carried a short distance by the Southern railway, to the Central stock yards. This, of course, would be just as inconvenient and as burdensome to the Louisville and Nashville Railroad Company as a special delivery upon the side track of some individual would be. For in practical operation it makes no difference whether the special delivery by the Louisville & Nashville Railroad Company be on a side track connecting with some industry, or on a side track connecting with some other railroad. The purpose of establishing its live-stock depot was that it might make all deliveries of live stock for the Louisville market at that place, and that it should not be compelled to make deliveries of live stock for the Louisville market either at the private siding of some individual or at the siding connecting it with some other railroad which might in turn make a delivery to the individual.

The facilities provided for the handling of live stock at defendant's live-stock depot at the Bourbon stock yards are very commodious, and are amply sufficient for the proper handling of all live stock which comes to the Louisville market. Under the contract heretofore mentioned there has been provided and maintained an ample force of men skilled in the handling of live stock; and such live stock have been under the operations of said contract, carefully and skillfully and promptly handled. Moreover, there is no charge made against the shipper or owner of the stock for the loading and unloading of his stock at the said Bourbon stock yards, or for keeping the same until the owner thereof shall have had a reasonable opportunity to receive it and dispose of it as he sees fit. He may,
19 if he chooses, leave the said live stock with the Bourbon stock yards to be further kept and handled for him; but this is entirely a matter of option with him. He can leave it or he can take it away, as he pleases. If he does choose to leave his live stock with the Bourbon stock yards for handling, then under the aforesaid

contract the said Bourbon stock yards has bound itself to make its charges to him reasonable.

On the faith of the said contract both the Louisville & Nashville Railroad Company and the Bourbon Stock Yards Company have expended large sums of money in providing ample facilities for the handling of live stock at the said depot, including the building of many side tracks, the erection of sheds, the construction of pens and chutes, and the establishment of quarantine pens in which cattle coming from certain territory liable to infection, can be kept separate from others in accordance with the regulations of the United States on that subject; all of which has been done under the belief on the part of both of said companies that the contract was a valid contract.

I also desire to say, and do say, that before the erection of any of the structures of the Central Stock Yards Company by Mr. B. H. Hurt, who is the president of that company, and was its chief promoter, came to the president of the Louisville & Nashville Railroad Company *as* asked if arrangements could be made for the receipt and delivery by the Louisville & Nashville Railroad Company of live stock at said stock yards, to be located where the present stock yards of the Central Stock Yards Company are erected; and the president of the Louisville & Nashville Railroad Company told him at that time, before any of the works or buildings of the said company had been erected, that the Louisville & Nashville Railroad Company would not and could not receive or deliver live stock at that place, or at any other place than its regular live-stock depot at the Bourbon stock yards, because it had entered into a contract with the Bourbon Stock Yards Company, which was still in effect, and was believed to be a valid and just contract, under which the Louisville & Nashville Railroad Company could not and would not receive and deliver live stock at any other place than at the Bourbon stock yards. Mr. Hurt then called attention to the fact that the Central stock yards were not to be within the limits of the city of Louisville, but the president of the Louisville & Nashville Railroad Company said to him that it was manifestly intended as a stock yards for the Louisville and was within the meaning and spirit of the contract between the Bourbon stock yards and the Louisville & Nashville Railroad Company as much as if it were actually within the limits of the said city.

As to the three alleged connections between the tracks of the Louisville & Nashville Railroad Company and the tracks of the Southern Railway Company referred to in the bill of complaint the facts are as follows:

As to what is referred to in the bill as the Bergen & Meehan switch this is a mere private side track which belongs to a private individual, not to the Louisville & Nashville Railroad Company, and is not open to general use by the Louisville & Nashville Railroad Company.

As to what is referred to in the bill as the Fourth Avenue connection, it is true that there is a connection at this point between the tracks of the Louisville & Nashville Railroad Company and those

of the Southern railway, but that place is one wholly unfit for the regular transfer of live stock from one of said railroad companies to the other. This is a point where the main tracks of the Louisville & Nashville Railroad Company and the tracks of the Louisville Railway Company (an electric street-car line) all cross each other. And but a few feet east of this point of crossing is a public street paved with asphalt, whereas just a few feet west of this point of crossing is a passenger station on the line of the Southern railway, at which many passengers get on and off the passenger cars of the Southern railway. Thus passengers who get off of such cars come immediately across the said point of intersection of said tracks to a point where they can take the cars of the Louisville Railway Company to be brought into the city; while on the other hand, persons intending to leave the city from said passenger station go out on the Fourth Street cars of the Louisville Railway Company to the said point of crossing and there alight, walk over the crossing to the aforesaid passenger station of the Southern railway and there take its cars. Furthermore, there are no side tracks at the said crossing or intersection upon which cars can be set off by the Louisville and Nashville Railroad Company to await there being taken up by the Southern Railway Company or *vice versa*. And if an attempt should be made to exchange cars at that point it would be necessary to leave these cars either on the main tracks of the Louisville & Nashville railroad over which its regular passenger trains travel, or on the main track, which is a single track, of the Southern Railway Company over which its passenger trains regularly pass.

21 It would, therefore, be impracticable as well as dangerous, for the reasons heretofore mentioned, to attempt to make said Fourth and G Street crossing a regular place of interchange of live-stock cars between said two railroad companies.

The only other point of physical connection which has been alleged to exist between the tracks of the Louisville & Nashville Railroad Company and those of the Southern Railway Company is at Seventh and Magnolia streets. This point is about two miles north of south Louisville and the south Louisville yards referred to in the bill of complaint, and is about one and one-half miles south of defendant's station at Tenth and Broadway. To reach this point of connection, to wit: at Seventh and Magnolia avenue, it would be necessary to have a switch-engine and crew take the live-stock cars destined for the Central stock yards and carry them northwardly about two miles over the defendant's tracks running from south Louisville to its aforesaid station at Tenth and Broadway, which is entirely out of the course by which live-stock cars travel from south Louisville to defendant's live-stock depot at the Bourbon stock yards. In other words, to reach the said Seventh and Magnolia Avenue crossing it is necessary to use about two miles of defendant's terminal tracks reaching its main passenger station and one of its main freight yards, which tracks are not used in the conduct of its live-stock business where the stock is delivered at its regular live-stock depot, at the Bourbon stock yards. These tracks reaching from south Louisville to its aforesaid depot

and yards near Tenth and Broadway are very greatly crowded with business, even as that business is now conducted. As it is now, there is so much traffic over the said tracks between south Louisville and the yards near Tenth and Broadway, that the switch-engine plying between those two points does not and cannot make special deliveries at side tracks along the way, but carries cars, without stopping, from south Louisville northwardly to the yards near Tenth and Broadway, from which last-mentioned yards special deliveries are made at individual sidings by another switch-engine and crew where such special deliveries are made at all. But this method of doing business would necessitate too much delay for the proper handling of live stock for reasons heretofore explained, and to compel defendant to handle live stock over those tracks, and make deliveries of live stock for the Central stock yards to the Southern railway at Seventh and Magnolia, if there is any considerable amount of said business, as complainant anticipates,
22 would be a very great burden upon defendant and a great interruption of its business.

Moreover the effect of the order or decree sought by complainant would be to require defendant to establish against its will a new through route for the transportation of cattle from points on its own line to the Central stock yards, a point on the Southern railway, and to deliver freight to the Southern railway without the prepayment of freight charges, whereas I submit that none of these things are required by, but are inconsistent with the act of Congress entitled "An act to regulate commerce," approved February 4th, 1887, and the amendments thereto, which the defendant has understood to be the exclusive law and regulation by which it was to be governed in handling continuous shipments from a point in one State to a point in another State.

Furthermore, the effect of the order or decree sought by complainant would be to compel defendant against its will to make exchange of traffic with the Southern railway at Louisville, Ky., so as to effect the continuous carriage or shipment from a point in another State to a point in Kentucky on the line of said Southern railway, and in order to effect this defendant would be required practically to afford to the Southern railway the use of defendant's terminal facilities and tracks, something again which is inconsistent with the said act to regulate commerce and the amendments thereto.

WALKER D. HINES.

Subscribed and sworn to before me by Walker D. Hines, this 14th day of January, 1902. My commission expires at the end of the present session of the senate.

HUSTON QUIN,
N. P. J. C., Ky.

The Exhibit "Contract" above referred to is as follows:

This agreement made and entered into this 20th day of September, 1888, by and between the Louisville & Nashville Railroad Company, first party, and the Bourbon Stock Yard Company, second party.

Witnesseth, that whereas the second party is the co-owner and lessee of two stock yards, one situated in the vicinity of Fourteenth and Kentucky streets, and the other at the head of Market street, both in the city of Louisville, and contiguous to the railroad lines of the first party,

23 And whereas, on the 8th day of October, 1880, the parties hereto entered into an agreement running for ten years from that date, under which the first party undertook to deliver so far as it legally could, to the second party, all live stock shipped over the first party's lines and consigned to the city of Louisville, the second party agreeing to receive, unload, care for and deliver same; also to load live stock shipped over the first party's lines and consigned to the city of Louisville, the second party to receive, unload, care for and deliver same; also to load live stock for shipment and to charge not more than eighty cents per car for loading and unloading such live stock.

And whereas, on the nineteenth day of March, 1881, second party made a similar contract, running for ten years from that date with the Louisville, Cincinnati and Lexington Railroad Company, whereby similar agreements and services were to be performed at the second party's stock yards, at the intersection of Market street with the L., C. & L. railway, the second party to charge not more than sixty cents per car-load for loading or unloading live stock at said Market Street yard. The first party to this agreement having since acquired the property of the Louisville, Cincinnati & Lexington R'y Co., succeeds to the obligations and privileges of that company under said contract.

And whereas, the second party desires to make certain important additions and improvements to its stock yards and their equipment, also to build pens with a view to establishing a mile market adjacent to its present yards. And, therefore, desires to have the above-mentioned contracts extended so as to justify it in making the necessary expenditures to effect these improvements.

And whereas, other stock yards have been located in the vicinity of Twenty-eighth and Broadway streets in said city, in competition to the yards of the second party and being so located as to be inaccessible to business passing from or to the lines of the first party; and that if the efforts now being made to establish business at these last-mentioned yards should be successful, it would tend to divert business from the lines of the first par*ties*, especially its lines between Louisville, Cincinnati and Lexington, as stock shipped from those yards would naturally pass over the Kentucky and Indiana bridge, placing the first party at a disadvantage in competition for the transportation of such stock.

24 And whereas, the second party is willing to make a lower charge for loading and unloading of live stock than is stipulated for in either of the present contracts above mentioned.

It is, therefore, agreed that for and in consideration of the premises and of the mutual covenants, stipulations and promises hereinafter set forth, and the profits to be derived therefrom, the parties hereto agree as follows:

1st. The second party agrees to maintain and keep in good order the two stock yards above mentioned, each of sufficient capacity and with suitable accommodations for the carrying out of this contract; and at the Market Street yards to make the necessary additions to the said premises and to build additional pens for the handling of mules, and will facilitate the establishing of a mule market at the said yard in addition to the facilities at present existing.

2nd. Both of the said stock yards to be always properly equipped with suitable fencing, feeding pens and other conveniences for the proper care and handling of live stock, such as are usual and customary in the best-conducted stock yards in this country.

The second party further agrees to keep at the said stock yard a sufficient number of skilled workmen to perform the services herein undertaken by it, and generally to do such work and labor as is generally provided in stock yards of the best class, and especially that said workmen shall be skilled and well qualified to load or unload any or all live stock which may be received or delivered by the first party at the said yards.

And the second party agrees and promises to load, unload and care for, at its own risk of damages, all live stock that may require such loading or unloading on cars at the said yards, and to charge therefor no more than is charges at the same time for similar services by the managers of other stock yards in said city, and in no event to charge more than fifty cents per car-load for loading or unloading. No charge is to be made for loading or unloading where the shipment consists of less than a car-load, as per waybill.

And the first party agrees to pay to the second party the charge not exceeding fifty cents per car, as above prescribed for each car-load of stock loaded or unloaded at said yards from or for the first party's railroad lines; and the second party agrees that all charges for keeping, feeding and caring for live stock coming to its yard under this contract directly or indirectly shall be reasonable; and said second party will not, without the consent of the proper officer of the first party, charge more for keeping, feeding and caring for the live stock of its patrons than is charged for similar services or supplies by other stock yards in said city. And the second party shall be responsible for all charges for stock delivered by said first party upon delivery to it by the first party and shall pay the same promptly to the first party in such manner, and at such times as may be directed by the traffic manager or gen'l freight ag't of the first party, and generally in all matters relating to the shipment and delivery of the stock at said stock yards, the second party is to act as the agent of the shipper or consignees respectively, and to answer for and be responsible to them for the proper conduct and management of all such matters.

3rd. The first party agrees to maintain in good order and repair all necessary and proper switches and side tracks for the safe and convenient loading and unloading of live stock at the said yards, but all the necessary chutes, platforms, pens and appliances, necessary and proper (and of the best character) for the safe loading and

unloading of live stock at both the said yards shall be erected and maintained in good order and repaired by the second party, subject to the direction and requirements of the first party's general manager or superintendent, and the second party hereby assumes all risk and responsibility, for any damage or injury which may be sustained by stock received or delivered at either of said yards, and necessary changes, improvements or repairs required by the first party's general manager or superintendent shall be thoroughly and promptly made by and at the expense of the second party.

4th. The first party agrees that it will not lease, rent or sell any of its ground in the city of Louisville, for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said city, and it will establish no other stock depot in the said city, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the roads of the first party, and consigned to the city of Louisville, and should any live stock be shipped to other person or persons in said city, the first party hereby makes and agrees to make the stock yards of the second party the stock depot of the first party for said city and agrees to unload all live stock shipped to said city at the yard of
26 the second party, but if the provisions of this section of this contract be abrogated or invalidated by judgment of any court or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions, and the second party shall at its own cost and expense, defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom.

5th. It is agreed that the delivery of stock in cars upon the switches or sidings provided for the purpose at the stock yards of second party, shall be deemed a delivery to the second party, and thenceforward, the second party will be responsible to owners, consignors or shippers for the said stock.

6th. This contract is to take effect on October 1st, 1888, and remain in effect for ten years from its date, unless sooner terminated by operation of law or judgment of court.

7th. The contracts of October 8, 1880, and March 19, 1881, mentioned in the preamble of this agreement, are hereby abrogated and annulled, except for the settlement of any unpaid accounts for services rendered unto them, or any legal questions that might arise under or by the execution of this contract.

In testimony whereof, the parties hereto have caused these presents to be executed by their duly authorized officers and their corporate seals affixed on the day and year first above written.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.] By M. H. SMITH, *Vice-President.*

Attest: J. H. ELLIS, *Secretary.*

BOURBON STOCK YARD COMPANY,

[SEAL.] By J. G. BARRET, *President.*

Attest: CLIFTON RODES BARRET, *Secretary.*

It is agreed between the Louisville & Nashville Railroad Company and the Bourbon Stock Yard Company, parties to the within agreement, dated September 20th, 1888, that the same shall be extended for a term of ten years from the date of its expiration, that is, for a term of ten years from September 20, 1898, and each party in consideration of the undertaking of the other agrees to perform and abide by all the terms, stipulations and conditions of the within agreement, for the term of ten years from September 20th,
27 1898, just as if said agreement had originally provided that it should remain in effect for twenty years instead of ten years from its date.

In consideration of the premises, the Bourbon Stock Yards Company further agrees that it will, during the term of ten years for which the within agreement is hereby extended furnish, through its own meter and at its own expense all water necessary in any way for the maintenance or operation of the stock yards named in the within agreements or necessary for the performance of its obligations under the within agreement, *are* necessary for the performance of its obligations under the within agreement as hereby extended, instead *of* heretofore, of using water through the meter of, and at the expense of the Louisville & Nashville Railroad Company.

In witness whereof, said Louisville and Nashville Railroad Company and Bourbon Stock Yards Company hereunto subscribe their names and affix their corporate seals this the 12th day of July 1897.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.] By N. H. SMITH, *President.*

Attest: J. H. ELLIS, *Secretary.*

BOURBON STOCK YARD COMPANY,

[SEAL.] By H. R. RAY, *President.*

Attest: GEORGE T. WOOD, *Secretary.*

And on another day of said term of said court, to wit, on the 17th day of Jan., 1902, came the parties by their counsel. The complainant by counsel filed the affidavits of W. A. Evans, S. A. Stalcup, T. C. Powell, J. W. Byrne, J. E. Miller, R. C. Watkins, and B. H. Hurt, herein.

The defendant also filed its answer and the affidavits of Walker D. Hines (2), M. H. Smith and M. J. Reedy herein.

The complainant's motion for a temporary injunction coming on to be heard, was argued by counsel, in part and there not being time to conclude same today, time is given until tomorrow.

28 The affidavit of W. A. Evans, above referred to, is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of W. A. Evans.

W. A. Evans, being duly sworn, says that he was in the service of the Bourbon stock yards in Louisville, Kentucky, about 22 years and occupied different positions during such service, including that of yardmaster, and he further says that no live stock coming to Louisville to the Louisville market, could or can get to the said Bourbon stock yards other than over the tracks and line of railway of the Louisville & Nashville Railroad Company, and that during his service there was much complaint of the delay on the part of shippers in having deliveries made of their stock at said Bourbon stock yards; that he has examined the plant and equipment of the Central stock yards and believes the facilities for loading and unloading live stock with safety and promptness possessed by the said Central stock yards are of the most modern character, and equal to those possessed by any stock yards within his knowledge.

He further knows personally R. M. Wayhen, weigher at the Central stock yards, Andrew Graves, E. Brewer, Harry O'Brien, David Crady, Sam. Moore, F. Dupen, and William M. Hicks, all of whom are in the employ of the Central stock yards, and that the said last seven named are skilled workmen in the performance of the services necessary to the speedy and safe loading and unloading, giving attention to and caring for, and handling live stock from having served with them and observed their skill and ability in said line, and considers said corps of workmen so employed at Central stock yards to render such service of the best to be had.

He further says that he knows the location of the break-up yards of the Louisville & Nashville Railroad Company in South Louisville and the position of the side yards with respect to the
29 location of the Central Stock Yards plant, and that the said Central Stock Yards plant is only a few hundred yards eastwardly of said break-up yards, and much nearer than the plant of the Bourbon Stock Yards Company, and that of the live stock coming to the Louisville market over the Louisville & Nashville railroad he believes that about 80 or 85 per cent. comes from the South and is broken up in the yards of the Louisville & Nashville Railroad Company in South Louisville and that if handled in making delivery thereof, at the said Central stock yards as said stock is handled for the Bourbon stock yards, by the said Louisville & Nashville Railroad Company, a distance in transportation of about five miles would be saved in making delivery at the said Central stock yards.

Affiant further says that he is not now in the employ of the Bourbon stock yards or any stock yards, but has been assistant postmas-

ter for a period of over two years, and still occupies the same position.

[SEAL.] W. A. EVANS.

Subscribed and sworn to before me, by W. A. Evans, this 17th day of January, 1902. My commission expires February 2, 1902.

MARY M EWING,
N. P., J. Co., Ky.

The affidavit of S. A. Stalcup, above referred to, is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of S. A. Stalcup.

The affiant, S. A. Stalcup, says that he is the trainmaster of the Southern Railway Co. in Kentucky, and as such is charged with the duty of looking after and supervising the movements of trains and cars over the lines and terminals of the Southern Railway Company in Kentucky, at Louisville, or what is known as the Louisville division of said railway system.

Affiant further states that it is the custom and daily practice of the Southern Railway Company, in Kentucky, at Louisville, to deliver to the Louisville & Nashville Railroad Company at its connections with said railway system loaded cars of the said Southern Railway Company for points on the line of the Louisville & Nashville Railroad Company; and that it constantly delivers live stock loaded at points on its lines in Southern Railway Company's cars and destined to the Bourbon stock yards at Louisville, Ky., located on the Louisville & Nashville Company's tracks, which said cars are transported, transferred and delivered to said Bourbon stock yards by the Louisville & Nashville Railroad Company; and that constantly carload lots of live stock originating at the Bourbon stock yards are transported, transferred, switched and delivered at the points of physical connection between the said Southern Railway Company in Kentucky and the Louisville & Nashville Railroad Company, destined to other points in and out of Kentucky.

The affiant further states that the point of physical connection between the tracks in Louisville, Ky., of the Southern Railway Company in Kentucky, and the Louisville & Nashville Railroad Company, at 7th and Magnolia streets, is about a mile and a half from what is known as Central Stock Yards station, Kentucky, and that to receive, transport, transfer and deliver a car or cars of live stock at said point of physical connection from the Louisville & Nashville railroad, and the delivery thereof at Central Stock Yards station, Kentucky, and the return of the empty cars so received from

said Louisville & Nashville Railroad Company, at said point of connection, requires from an hour to not exceed two hours, and that on the 5th day of November, 1901, the said Louisville & Nashville Railroad Company did place upon the switch at the point of physical connection at 7th and Magnolia streets, Louisville, Kentucky, car-loads of live stock at 1.02 p. m., destined to Central Stock Yards station, Kentucky; that the same were removed by the said Southern Railway Company in Kentucky at 1.10 p. m., and delivered at Central Stock Yards station at 1.25 p. m., and thereafter the empties were returned to the said point of connection aforesaid, and delivered to the Louisville & Nashville Railroad Co. at 2.40 p. m., consuming an hour and thirty-eight minutes from the time of
31 delivery upon the switch of the Southern Railway Company in Kentucky, by the Louisville & Nashville Railroad Company, and the time of the redelivery of the empty cars to the Louisville & Nashville Railroad Company at said point.

Affiant further says that live stock originating at points on the line of the Southern Railway Company in Kentucky, is transported, transferred, switched and delivered without discrimination, whether the same is destined to the Bourbon stock yards, in Louisville, Ky., or the Central stock yards, at Central Stock Yards station, in Jefferson county, Kentucky.

Affiant further says that the trackage and switching facilities of the Southern Railway Company in Kentucky, at Louisville, are adequate and sufficient for the prompt transfer and delivery of any and all live stock that may be destined for any point on its line, including the Central Stock Yards station, Ky., and that after delivery by such connecting carrier of live stock or freight at such point of connection no further service is required by the carrier upon whose line such freight originated.

Affiant further states that if live stock destined to the Central stock yards, and reaching the break-up yards of the Louisville & Nashville Railroad Company, at South Louisville, is promptly handled as such character of freight should be, by the Louisville & Nashville Railroad Company, to the Southern Railway Company in Kentucky, at 7th and Magnolia Streets connection, that same can be delivered and in the course of business would be delivered in less time than is required for delivery of such character of freight from south Louisville to the Bourbon stock yards, as the distance from south Louisville to Central stock yards via the 7th and Magnolia Streets connection is about three miles, and the distance from south Louisville to the Bourbon stock yards is twice that distance or more.

S. A. STALCUP.

Subscribed and sworn to before me by S. A. Stalcup, this 15th day of January, 1902. My commission expires the 12 day of January, 1904.

[SEAL.] CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

32 The affidavit of T. C. Powell, above referred to, is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMville, Defendant.

Affidavit of T. C. Powell.

The affiant, T. C. Powell says that he is assistant freight traffic manager of the Southern Railway Company, and the Southern Railway Company in Kentucky; that on October 5th, 1901, he, as assistant freight traffic manager of said railway, notified, by letter, Mr. D. M. Goodwyn, general freight agent of the Louisville & Nashville Railroad Company, at Louisville, Kentucky, as follows: "October 5th, 1901. 7753 A. Mr. D. M. Goodwyn, general freight agent, Louisville, Ky. Dear Sir—Rate adjustment. Rates on live stock to and from Central stock yards, Louisville, Ky. I beg to advise that we have just been officially notified that the Central Stock Yards Company, whose yards at south Louisville, have been selected as our live-stock depot in Louisville, will be ready for business November 1st, 1901, and the first sales day will be Monday, November 4th, 1901.

The Southern railway has arranged with the Central Stock Yards Company to perform switching between their yards and connecting points on other lines in Louisville, the tariff on stock to and from your line being as follows:

Between L. & N. railroad at Fourth avenue and Central Stock Yards Company, $1.00 per car. Between L. & N. railroad at 7th and Magnolia, and Central Stock Yards Company, $2.00 per car.

This charge covers cost of handling the loaded car in one direction and the return of the empty car in the reverse direction.

Please be advised that on and after November 1, 1901, we will receive from your line at either one of the above connecting points all live stock tendered us for delivery to the premises of the Central Stock Yards Company, and will be responsible for such de-
33 livery, and the collection of your charges on same in the usual way. Will you please advise all interested to the above effect. We shall be glad to have you indicate in your live-stock tariffs showing rates to and from Louisville, or by circular, that live stock may be handled to and from the Central Stock Yards Company in connection with the Southern railway."

Similar notices dated October 5th were sent to the freight traffic officers of the other lines connecting with the Southern Railway Company in Louisville.

Affiant further states that it is the universal custom between reputable and solvent railroad companies to make delivery of carload lots of freight of any and all kinds without exactly prepayment

of freight under notices of the character above set forth, where the receiving common carrier becomes responsible for such delivery and collection of all charges on same.

Affiant further states that he has since been advised that the Central Stock Yards Company is located at a point on the lines of the Southern Railway Company in Kentucky, in Jefferson county, and not in the city of Louisville. Affiant further says that he authorized the publication of circulars D. 3, dated October 31, signed jointly by Edwin Fitzgerald, assistant freight agent, Louisville division, and R. A. Campbell, assistant freight agent St. Louis division.

He further states that subsequent to his notice of October 5th, in regard to the switching to be performed to the Central Stock Yards Co.'s plant, acknowledgment- were received from the following: J. B. Hill, general freight agent, P. C. C. & St. L., under date of October 11th; F. N. Whitaker, freight traffic manager, Chesapeake & Ohio, under date of October 9th; E. F. Cost, freight traffic manager, Cleveland, Cincinnati, Chicago & St. Louis Railway Company; F. B. Bowes, general freight agent, Illinois Central Railroad Company, and, in the course of correspondence, communications in regard to the establishment of rates on live stock based on said notice of October 5th were received from C. H. Rockwell, traffic manager, Chicago, Indianapolis & St. Louis Railway Company; L. J. Irwin, general freight agent, Louisville, Henderson & St. Louis Railway Company; S. T. McLaughlin, general freight agent of the B. O. & S. W.; but no response was received from the Louisville & Nashville Railroad Company.

34 Affiant further states that under date of October 31, he received and acknowledged a letter dated October 31, 1901, signed D. M. Goodwyn, general freight agent, reading as follows: "Louisville, Kentucky, October 31, 1901. Mr. T. C. Powell, A. F. T. M., Southern R'y, Louisville, Ky. Dear Sir: Delivery of live stock at Louisville. I beg to hand you herewith copy of our circular, N. S. 1154, of October 16th, with respect to the issuance of live-stock contracts covering specific delivery within the city of Louisville and shall be glad to have you give your agent and representative such instruction as may be necessary to have this circular complied with. Kindly acknowledge receipt of this circular by bearer and advise us if you will comply with our request."

Said circular is as follows:

"Louisville & Nashville R. R. Co.

Office of the general freight agent.

Circular N. S. No. 1154.

(Cancels circular No. N. S. 956 of 10–11–1900.)

LOUISVILLE, KENTUCKY, *October 17th*, 1901.

Delivery of live stock at Louisville, Ky. To agents and connections. In accepting shipments of live stock destined to Louisville, Kentucky, via this company's lines agents and connections must

exercise particular care and see that no agreement appear in the contract to make delivery on any specific switch or siding in the city of Louisville. Shipment may, however, be consigned (as heretofore) to the care of firms or individuals at Louisville, Ky., but no contracts calling for delivery at any special switch or siding must be made or issued.

(Signed) D. M. GOODWYN,
General Freight Agent."

Affiant further says that on October 26th, 1901, he received and acknowledged the following letter dated October 25th, 1901, signed by Mr. Oscar Fenley, president of the Bourbon Stock Yards Company:

"LOUISVILLE, *October 25th*, 1901.

T. C. Powell, Esq., ass't freight traffic manager, Southern Railway Co., Louisville, Ky.

DEAR SIR: An arrangement has been effected by which
35 the Louisville & Nashville Railroad Company will receive live stock at 14th and Ormsby Ave., and transfer it over the Dumesnil switch to the Bourbon stock yards, to be moved for $1.00 per car.

I am advised that your company can, if it choose, avail itself of the decreased rate and the improved service by delivering at Ormsby Ave. connection."

Affiant further says that on October 26th, 1901, he addressed the following communication to Mr. D. M. Goodwyn, general freight agent of the Louisville & Nashville Railroad Company, Louisville, Ky.:

"OCTOBER 26TH, 1901.

Mr. D. M. Goodwyn, G. F. A., Louisville, Ky.

DEAR SIR: Transportation: Switching at Louisville. I am just in receipt of advice from the Bourbon stock yards that your switching rate from 14th and Ormsby avenue to the Bourbon stock yards have been reduced to $1.00 per car. Will you kindly advise if this information is correct and to what extent the switching rate will apply on business delivered you by the Southern railway."

The following response was received from Mr. Goodwyn, dated November 1st, 1901:

"Yours of the 26th file 44–A. In reply thereto, beg to advise that under date of October 14th I advised your Mr. Fitzgerald as follows: 'This is to advise you that effective on the 17th inst., the L. & N. switching charge for handling stock between the Bourbon stock yards and the connecting point of interchange with L. & N. tracks will be $1.00 per car. This charge has heretofore been $2.00 per car. Please acknowledge receipt.'

Yours truly, D. M. GOODWYN, *G. F. A.*"

This notice of the Louisville & Nashville Railroad Company did not indicate any change in the policy of that company in the matter of switching live stock coming from points competitive with that road and was therefore understood to mean that the reduction would apply only on live stock coming from local stations on the Southern railway in Kentucky.

T. C. POWELL.

36 Subscribed and sworn to before me, by T. C. Powell, this the 15th day of January, 1902.

My commission expires the 12 day of January, 1904.

CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky. [SEAL.]

Official No. D 3.

Southern Railway Company in Kentucky (Incorporated).

St. Louis—Louisville lines.

LOUISVILLE, KY., *October* 31*st*, 1901.

To agents and connections:

Effective November 1st, 1901, a station will be established at Central stock yards, Ky., 9 miles east of Louisville, Ky. Mr. J. H. Ashcraft, Jr., has been appointed as agent.

Connections will please arrange to revise tariffs and division sheets accordingly.

EDWIN FITZGERALD,
Assistant General Freight Agent, Louisville Division.
R. A. CAMPBELL,
Assistant General Freight Agent, St. Louis Division.

The affidavit of J. W. Byrne above referred to is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. W. Byrne.

37 The affiant, J. W. Byrne, says that he is the superintendent of the Central Stock Yards Company, located on the line of the Southern Railway Company in Kentucky at Central Stock Yards station, in Jefferson county, Ky.; that heretofore, to wit, on the 20th day of May, 1901, the said Central Stock Yards Company purchased about twenty-six acres of land in Jefferson county on the line of said Southern Railway Company in Kentucky, for the purpose of constructing and putting in operation a modern and well-equipped stock-yard plant; that since the organization of said company he has been and is now superintendent of said company, and that said company since

the purchase of said twenty-six acres of land has constructed a modern and well-equipped stock-yard plant thereon, with stock-pens and buildings for the caring for, feeding and handling of live stock of every kind, covering about fourteen acres of land with the latest and most modern improvements for stock-yard purposes, and the safe handling of live stock; that the said property was purchased for stock-yard purposes in the quantity demanded by the said Central Stock Yards Company and was the most available to be had in the quantity required, and could not be had in the city of Louisville; that said stock yards have cost in the construction thereof a large amount of money, to wit, about $200,000.00; that said plant has for its use in the receipt and delivery of like stock of every character thereat about 4,000 feet of sidings, switches and tracks; that it has constructed a native-cattle department which consists of ten single and double deck chutes of the dimensions of 40 x 25 feet each, and 53 pens of the dimensions of 40 x 30 feet each, with the capacity of 40 cattle each at least, and 17 pens of the dimensions of 25 x 16 feet each, of the capacity of 20 cattle each, or a total capacity for native of 2,460; that in the said native-cattle department there *is* also constructed 2 Fairbanks scales of the most modern and latest improved pattern, one with the capacity of 81,000 pounds and the other 61,000 pounds, and in the said native-cattle department there has also been constructed a hay pen of the dimensions of 30 x 30 feet, with the capacity for holding ten cars of hay; that it has also constructed under the regulations and requirements of the Government, and under plans approved by the Government a quarantine department for cattle, which consists of 25 pens of the dimensions of 30 x 40 feet each, with a capacity of 40 cattle each, or an aggregate of at least 1000 cattle; that it also has in the said quarantine department 4 cattle chutes, one hay pen, one Fairbanks
38 scales of the most modern and latest improved pattern with a capacity of 61,000 pounds; in the said department there is also a corn crib. Said quarantine cattle department in every respect has been approved by the United States Government inspector.

Affiant further states that the said Central Stock Yards Company has also constructed two buildings known as buildings Nos. 2 and 3, or a hog and sheep department of the said yards; that in the downstairs department of the said hog and sheep department, building No. 2, there are 50 pens of the dimensions of 30 x 30 feet each, with a capacity for 150 each; eight pens of the dimensions of 11½ x 15 feet each, with a capacity of 40 each; and two pens of the dimensions of 29 x 8 feet, with a capacity of 50 each or an aggregate capacity in the said building No. 2 of about 8000; and in the said department or building No. 2 there have been constructed 2 corn bins, and one Fairbanks scale, with the most modern and latest improvements, with a capacity of 61,000 pounds; that upstairs in said building No. 2 aforesaid, there are 32 pens of the dimensions of 30 x 30 feet each, with a capacity of 250 sheep each; 12 pens of the dimensions of 25 x 50 feet each, with a capacity of 100 sheep each; 20 pens of the dimensions of 15 x 15 feet each, with a capacity of 60 sheep each; and 26 pens of the dimensions of 7½ x 12 feet, each, with a ca-

pacity of 30 sheep each, or a total capacity of 11,180 sheep. Also in the said building No. 2 there are 20 assorting pens of the dimensions of 7½ by 18 feet each, and in the upstairs of said building two pair of Fairbanks' scales of the most modern and latest improved pattern, of a capacity of 61,000 pounds each; also 2 hay-houses and 4 inclines for handling the said live stock; that it also has constructed in its said yards another house known as building No. 3 for the handling of hogs and sheep; that there are 17 pens of the dimensions of 30 by 27 feet each, with a capacity of 125 each, and 25 pens of the dimensions of 7½ by 10 feet each, with a capacity of 20 each, or a total capacity in the said downstairs of building No. 3 of 2635; also one Fairbanks scale of the most modern and latest improved pattern of a capacity of 61,000 pounds; that in the said building in the upstairs department thereof there are constructed 26 pens of the dimensions of 40 by 25 feet, with a capacity of 150 each; and 20 pens of the dimensions of 28½ by 20 feet each, with a capacity of 100 each, or a total capacity of 5900 and in the upstairs depart-
39 ment of said building No. 3 there *has* been constructed two corn cribs, and one Fairbanks scale of the most modern and latest improved pattern of a capacity of 61,000 pounds and that in connection with the said hog and sheep department there *has* been constructed 11 single and double deck chutes of the dimensions of 40 by 25 feet each.

Affiant further says that said yards have completed 10 single and double deck chutes attached to the native cattle yards, and also 4 single chutes attached to the quarantine cattle department, all of which are complete; and that for the handling of cattle, hogs and sheep ample facilities exist, with alley-ways and means of placing the same in the departments aforesaid constructed for them through the said building; that the alley-ways and passages, together with the hog pens throughout the said building are paved with vitrified brick, and the said yards in every respect are the most modern and best equipped in the country.

Affiant further says that the said stock yards company has a large number of commission stockmen and brokerage firms at said premises, and the said company and the said brokerage firms have connection and business transactions with a large number of live-stock buyers, packers and dealers throughout the United States, and that unless the Central Stock Yards Company can have deliveries of live stock made at Central stock yards, Kentucky, where its plant is situated, and receive fair and equal treatment with other stock yards in Kentucky, that it will be damaged in many thousand dollars, and that its said damage will be incalculable and not susceptible of measurement by any actions for damage arising from the failure to bill or deliver live stock as directed from any point on the line of the said defendant to Central stock yards, Central stock yards, Kentucky, and required to switch, transfer, and make delivery of live stock to the Southern Railway Company in Kentucky at Louisville and all other connecting lines where same is consigned to Central stock yards or some person, persons, firm or corporation doing business at that place.

Affiant further says that with the appliances of the most modern character, with which plaintiff is equipped, live stock can be relieved from excessive heat or cold as easily and effectively as can be had at any stock yards and that delivery thereof from South Louisville, and the break-up yards of the Louisville & Nashville Railroad Company via Southern Railway Company at 7th and Magnolia
40 avenue can be made more quickly at the Central stock yards than at the Bourbon stock yards.

Affiant further says that it is not true, as stated in the affidavit of Walker D. Hines, that the Central Stock Yards Company, Central stock yards, Kentucky, is a Louisville market, but that on the contrary it is the Central Stock Yards, Kentucky, market. He says that where stock is sold to persons doing business in Louisville, the same is billed from Central stock yards, Kentucky, and shipped to the purchasers at Louisville; that the Southern Railway Co. has built a chute at 30th and Market streets where stock is billed, transported and delivered for butchers and packers in the western portion of Louisville, and that under the contract between the defendant, Louisville & Nashville Railroad Company, and the Bourbon stock yards, the Louisville & Nashville Railroad Company will not make delivery to any packer or butcher in the eastern portion of the city of Louisville, and upon the lines of the Louisville & Nashville Railroad Company, where stock is purchased by any packer or butcher located on the Louisville & Nashville railroad in the eastern portion of the city of Louisville, and such packer or butcher can only have delivery thereof made at the Bourbon stock yards, in Louisville, and that when purchase is made of stock by said packers and butchers at Central stock yards, Central stock yards, Kentucky, the same is billed and shipped over the Southern Railway Company from Central stock yards, Kentucky, to a point of physical connection between the tracks of the Southern Railway Company and the Louisville & Nashville Railroad Company, and there transferred, switched and delivered at the Bourbon stock yards to the purchasers thereof, and that under the arrangements and methods of business adopted by Central stock yards live stock is not driven through the streets of the city of Louisville and the public thereby endangered; and further that the distance from Central stock yards to the packers and butchers in East Louisville, and the packers and butchers in West Louisville is too great to have the said live stock driven through the streets of Louisville with safety to the public and without damage to the said live stock, and that in each instance where shipments are so made, as stated, the same are billed to Louisville, Kentucky, and delivered to the purchaser by the Southern Railway Company at 30th and Market streets, or delivered by the Louisville & Nashville Railroad
41 Company to the purchasers at its only place in Louisville, for delivery, namely, Bourbon stock yards, Louisville, Kentucky.

Affiant further says that it is not true that delivery of live stock by the defendant, Louisville & Nashville Railroad Company, to the Southern Railway Company for delivery by said Southern Railway Company to the Central Stock Yards Company, Central stock yards,

Kentucky, is as burdensome as making a delivery of live stock to a private switch or siding, as the consignment of live stock to the Central stock yards come in larger quantities than come to a private switch or siding, and that a number of cars could thereby be delivered to the Southern Railway Company at one and the same time from South Louisville by being placed upon the switch or siding at 7th and Magnolia streets, a distance of only about a mile and a half from South Louisville, and thence removed to Central stock yards a distance of about one mile and a half, or a total distance of about three miles; when if same is delivered from the break-up yards of the Louisville & Nashville Railroad Company at South Louisville to the Bourbon stock yards, the distance is from six to eight miles, with switching necessary at East Louisville to place the same on the tracks and at the chutes for unloading at the Bourbon stock yards.

Affiant further says that under the contract between the Central stock yards and the Southern Railway Company, filed with the affidavit of B. H. Hurt, president of said Central Stock Yards Company, live stock where consigned over the said Southern Railway Company to persons at Central stock yards, Kentucky, delivery thereof is made to the consignee or owner of the stock without any charge for loading or unloading thereof or for keeping the same until the owner thereof shall have a reasonable opportunity to receive and dispose of it as he sees fit. He says that it is true that if the owner chooses to leave the said live stock with the Central Stock Yards Company to be kept and held for him, which is entirely optional with him, Central Stock Yards Company only makes a reasonable charge for such care, keeping and attention given to such live stock.

Affiant further says it is true that to reach the point of connection, to wit, 7th and Magnolia avenue, from the break-up yards of the Louisville & Nashville Railroad Company, at South Louisville, it would be necessary to have live stock destined to the Central
42 stock yards placed by a switch-engine upon the connection at 7th and Magnolia, a distance of about a mile and a half from South Louisville; but it is not true, as stated in the affidavit of Walker D. Hines, that a delivery to the Central stock yards, via the Southern Railway Company at 7th and Magnolia, requires the use of two miles of defendant's terminal tracks, or any use of defendant's tracks by the Southern Railway Company to make delivery thereof to the Central stock yards, or that such delivery is more burdensome than for the Louisville & Nashville Railroad Company to make delivery thereof at the Bourbon stock yards.

And affiant further says that he did business for a number of years at the Bourbon stock yards and knows that a charge is made against the Louisville & Nashville Railroad Company where stock is delivered thereat of 50 cents per car, and that where the defendant Louisville & Nashville Railroad Company, makes delivery to the Central stock yards via Southern Railway Company at 7th and Magnolia no charge is made against the Louisville & Nashville Railroad Company for unloading such live stock, and that thereby the defendant, Louisville & Nashville Railroad Company is saved 50 cents per car by making delivery at a distance of one and a half miles

from South Louisville and at 7th and Magnolia avenue from making delivery at the Bourbon stock yards a distance of six or eight miles from the break-up yards of the Louisville & Nashville Railroad Company at South Louisville.

Affiant further says it is not true that by requiring the defendant Louisville & Nashville Railroad Company to make delivery of stock consigned to Central stock yards to the Southern Railway Company at 7th and Magnolia connection that same would require of defendant to establish against its will any new or through route for the transportation of cattle to points on its own line to the Central stock yards on the line of the Southern Railway Company, as in each and all of such cases the full Louisville freight rate and charge made by the Louisville & Nashville Railroad Company is paid to it by the shippers and owners of live stock, and that by making such delivery no use of the defendant's terminal facilities and tracks is demanded, or required by the Southern Railway Company and no damage, loss or injury would or could be occasioned the said defendant Louisville & Nashville Railroad Compaay.

JOS. W. BYRNE.

43 Subscribed and sworn to before me, by J. W. Byrne, this 16th day of January, 1902. My commission expires the 22d day of March, 1904.

H. V. DAVIS,
Notary Public, Jefferson County, Kentucky.

The affidavit of J. E. Miller above referred to is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. E. Miller.

Affiant, J. E. Miller, being duly sworn, says that he is a member of the commission firm of Stewart, Sanders, Miller & Company, with an office at Central stock yards, Kentucky, and the plant of the complainant, Central Stock Yards Company, and that at said plant there are quite a number of other commission merchants and foreign buyers who have business connection with a large number of butchers, packers, raisers and live-stock dealers throughout the State of Kentucky, and other States of the Union, and that unless the Central Stock Yards Company can have deliveries of live stock made at Central stock yards, Kentucky, where its plant is situated, and receive fair and equal treatment with other stock yards in Kentucky, that the said Central Stock Yards Company will be damaged in many thousand dollars, and the commission merchants and dealers in live stock thereat will likewise suffer great and irreparable damage, and that the damage to said Central Stock Yards Company

and to the commission merchants and dealers in live stock thereat will be incalculable and not susceptible of measurement by any actions for damages arising from failure to receive stock to be handled thereat by Central stock yards, or sales made thereof by commission firms and dealers located there.

44 He further says that the commission firms, and his firm, are receiving letters from patrons in Tennessee and other States *in* Kentucky (*sic*) expressing a desire to ship stock to Central Stock Yards Company for sale through commission merchants located there, but are deterred from doing so by the refusal of the Louisville & Nashville Railroad Company to deliver the same to Central Stock Yards Company at Central stock yards, Kentucky, and that the Central Stock Yards Company has been unable to get stock from Tennessee and other States than Kentucky since the injunction as to the State of Kentucky by the courts of Jefferson county, only by having same reshipped from the Bourbon stock yards to Central Stock Yards plant at Central stock yards, Kentucky, and that the defendant, Louisville & Nashville Railroad Company, in conjunction with the Bourbon Stock Yards Company have delayed shipments when so ordered to such an extent as to occasion great delay in making sales of the stock as ordered by the owners with great loss in weight to the live stock so shipped.

He further says that the damage to the Central Stock Yards Company in failing to get stock shipped will be impossible of measurement, because of the inability of the said Central Stock Yards Company or the commission firms doing business thereat, to determine what stock would have been shipped to the Central Stock Yards plant had Central stock yards, Kentucky, been upon the same footing with other stock yards and places for sale of live stock without discrimination against the said Central stock yards; and that further, where ascertainable as to the stock that would have been shipped the measurement of damage sustained by delays in making delivery will be impossible of correct ascertainment, and no means is furnished to The Central Stock Yards Company, complainant herein, or to the commission firms and dealers thereat, of accurately measuring the extent of their damage, and that, therefore, their said damage, and particularly the damage of the Central Stock Yards Company in the failing to have the stock for care and attention will be incalculable and not susceptible of measurement, and that the injury to the complainant and to the commission merchants at complainant's plant is a continuing injury from day to day, and if not prevented by an injunction or order of court requiring that the defendant, Louisville & Nashville Railroad Company, as a common carrier shall treat the Central Stock Yards Company, located at Central stock

45 yards, Kentucky, with fairness and place the same on equality with competitive companies that such course of conduct will result in the disorganization of the business arrangements and agencies of the various commission firms and live-stock dealers at Central stock yards, and raisers, dealers, handlers of live stock in Tennessee and other States than Kentucky, and result in the disor-

ganization and disruption of the business arrangements of complainant and the commission firms doing business at its plant, Central stock yards, Kentucky.

He files herewith as a sample of the letters received by his firm and commission firms at Central stock yards, Kentucky, a letter dated January the 9th, 1901, from one P. L. Reynolds a resident of Lancaster, Tennessee, and also a copy of a letter from the same party of date January 14, 1902, assigning reasons why shipments of live stock had not been made to affiant's firm.

He says that if the course of conduct on the part of the defendant is continued that the affiant for his firm and other commission merchants and dealers at Central stock yards, Central stock yards, Kentucky, will be unable to determine the stock diverted from them by the discriminating and unjust conduct on the part of the defendant, Louisville & Nashville Railroad Company, and in such manner it will be impossible to determine the extent of the injury to complainant, Central Stock Yards Company and to the commission merchants thereat, and that suits for damage arising upon the failure to ship each and all consignments offered would involve a multiplicity of suits, and would not afford to complainant, Central Stock Yards Company, or to the commission merchants doing business at said plant, any adequate or sufficient remedy for the injury inflicted upon them.

J. E. MILLER.

Subscribed and sworn to before me by J. E. Miller this 16th day of January, 1902. My commission expires the 12th day of January, 1904.

CHARLES JOHANBOEKE,

[SEAL.] *Notary Public, Jefferson County, Kentucky.*

The letters above referred to are as follows:

LANCASTER, TENN., *Jan.* 9, 1902.

Mess. Stewart, Sanders, Miller & Co., Louisville, Ky.

GENTLEMEN: I ship you some time ago a load of hogs that helt out well in weight only lost about 8 lb. to the head and made
46 a nice profit, but the load you sold for me on Jan. the 8th, lost in weight 1937 lbs. at least 1000 more than they ought to and lost me $104.87 in money besides my work I send you expense bill and a list of the hogs and who I bought them from and what each lot weighed. I had the hogs billed to Central stock, Louisville, Ky., but the R. R. would not take them billed that way Mr. W. B. Simpson (an old trader) looked at the hogs before I shipped them and said they would make good money and wanted to buy them. I think the R. R. has damage- me at least $150.00 and I think you ought to make them pay it. I have another load to ship in the morning if I get a car I hope to come out better next time it take- a heap of hard work to get up a load of hogs they are very scarce and hard to buy so please help me out this time.

P. L. REYNOLDS.

LANCASTER, *Jan.* 14, 1902.

Messrs. Stewart, Sanders, Miller & Co., Louisville, Kentucky.

DEAR SIRS: The only reason I did not ship you the load of hogs Friday was because I was afraid the R. R. would not deliver them promptly and they would not be sold until Monday. I don't blame the firm of Stewart, Sanders, Miller & Co., with none of my loss and hope you will not think I did you an intentional wrong in not shipping to you.

Respectfully,

(Signed) P. L. REYNOLDS.

Yours very respectfully,

STEWART, SANDERS, MILLER & CO.

R.

The affidavit of R. C. Watkins above referred to is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

R. C. Watkins, being duly sworn, says: I am vice-president
47 and traffic manager of the Central Stock Yards Company, and that the said company's plant is located at Central stock yards, Jefferson county, Kentucky, a duly established local station with authorized local agent on the line of the Southern Railway Company in Kentucky, and that said station is shown by the station list of said Southern Railway Company in Kentucky as being nine miles from its terminus in the city of Louisville.

Affiant further states that the Louisville & Nashville Railroad Company has no tracks at the said Central Stock Yards station, and that it is in no way prepared to handle stock from said Central Stock Yards station, therefore, the only way that stock can be handled from the said Central Stock Yarks station to the Bourbon stock yards at Louisville, Kentucky, is over the tracks of the Southern railway to Louisville, which in all instances is regularly billed by the agent of the Southern railway at Central stock yards, Kentucky, to Louisville, Kentucky, and by the Southern railway agent, at Louisville, Kentucky, delivered to the Louisville & Nashville Railroad Company to be switched, as all other stock is switched, which comes over the said Southern Railway Company's line, and from all of its local or non-competitive stations, which is stated the Louisville and Nashville Railroad Company will and does switch to the Bourbon stock yards at Louisville, Kentucky.

Affiant further states that he was for many years connected with the Illinois Central Railroad Company as its traveling freight agent, during which service the Louisville & Nashville Railroad Company refused to switch live stock coming from competitive points to the

Bourbon stock yards at Louisville, but just prior to the opening of the Central stock yards the Louisville and Nashville Railroad Company notified the Illinois Central Railroad Company that they would switch all stock coming into Louisville over their line from any point, and they are now switching stock coming from Hopkinsville, Ky., and from Memphis, Tenn., both competitive points between the Louisville & Nashville Railroad Company and the Illinois Central Railroad Company.

The affiant further states that his company nor no one connected with it, directly or indirectly, are hostile to the Louisville & Nashville Railroad Company, or its interests, and there is being delivered to the Louisville & Nashville Railroad Company live stock originating at Central stock yards, Kentucky, destined to eastern points and shipped over the Louisville & Nashville railroad from Louisville.

48 The affiant further states that the Louisville & Nashville Railroad Company has equal privileges and rights with other railroads, in securing live stock shipments from the Central Stock Yards Company plant, and that the same has been switched to them without prejudice in every instance, and this will continue to be the case, and such service will continue to exist.

R. C. WATKINS.

Subscribed and sworn to before me by R. C. Watkins, this 17th day of January, 1902. My commission expires the 12th day of January, 1904.

[SEAL.] CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

The affidavit of B. H. Hurt above referred to is as follows:

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of B. H. Hurt.

B. H. Hurt, being duly sworn says that he is the president of the Central Stock Yards Company, and that he has carefully read the affidavit of Walker D. Hines, first vice-president of the Louisville & Nashville Railroad Company, and that the statement therein that before the erection of any of the structures of the Central Stock Yards Company he (Hurt) came to the president of the Louisville & Nashville Railroad Company, and also went to the general manager of the said Louisville & Nashville Railroad Company and asked if arrangements could be made for the receipt and delivery by the Louisville & Nashville Railroad Company of live stock at stock yards to be erected where the present stock yards of the Central stock yards are located,

and the said Smith at said time, and before any of the work
49 or buildings of said company had been erected, advised him, the said Hurt, that the Louisville & Nashville Railroad Company would not and could not receive or deliver live stock at said Central Stock Yards' plant, or at any other place than at its regular live-stock depot at Bourbon stock yards, is a mistake, and not true in fact; that he did call upon said Milton H. Smith, as president of the Louisville & Nashville Railroad Company and the general manager of the said Louisville & Nashville Railroad Company, and asked them whether or not they would, at the point of intersection of the lines of the Louisville & Nashville Railroad Company with those of the Southern Railway Company in Kentucky, near the premises of the Central Stock Yards Company to be constructed, build a switch connecting the said Louisville & Nashville Railroad Company with the tracks of the said Southern Railway Company, and that the said Smith, as president of the Louisville & Nashville Railroad Company, and the general manager of the said company, advised him that the said Louisville & Nashville Railroad Company would not construct such switch for delivery at that point; but there was nothing then said as to whether or not the Louisville & Nashville Railroad Company would receive, transport, switch or deliver live stock to the Southern Railway Company or any connecting carrier for delivery by said Southern Railway Company or such connecting carrier to the plant to be constructed by the said Central Stock Yards Company. He says that he received a letter from the general manager of the Louisville & Nashville Railroad Company showing the nature of his request of said railroad, and its action thereon, which is dated December 18th, 1900, and reads as follows:

"DECEMBER 18TH, 1900.

Mr. B. H. Hurt, No. 102 West Main street, Louisville, Ky.

DEAR SIR: Please refer to conversation in this office relative to the construction of a siding in connection with tracks of this company across certain property owned by you near our South Louisville yards.

I wish to advise that the Louisville and Nashville Railroad Company must decline to construct the siding in question. I return the blue-print map you left with me.

Yours truly,

G. E. EVANS,
General Manager."

50 He says that on December 14th, 1891, John Cudahy purchased from the Louisville and Nashville Railroad Company and for stock-yard purposes certain tracts or parcels of land, as per deed recorded in Deed Book 389, page 324, in the office of the county clerk of Jefferson county, Kentucky, and in part consideration therefor the said John Cudahy was to, and did, dedicate for street purposes a strip of ground 30 feet wide, or the eastern one-half of Floyd street, if extended, from the right-of-way line of the old Louisville Southern railroad, now Southern Railway Company in Kentucky, to the southern boundary of the land conveyed by said deed, and that

afterwards on the 10th day of June, 1892, the said John Cudahy, without being joined by his wife, conveyed to the Louisville Terminal Railway Company a right of way 30 feet in width over and along the land so purchased by said John Cudahy, beginning at a point where the line of the said John Cudahy in aforesaid deed intersects Floyd street, if extended, and running thence eastwardly along the land of the said John Cudahy so purchased from the Louisville & Nashville Railroad Company and along the Louisville Southern railroad, now the Southern Railway Company in Kentucky, to the eastern line of the said track, which said conveyance was never by the said John Cudahy acknowledged or recorded, or the instrument conveying or attempting to convey said right of way signed by the wife of the said John Cudahy, and afterwards, on December 8th, 1900, as per deed recorded in Deed Book 544, page 264, the said John Cudahy and wife conveyed all of said land, disregarding the said conveyance to the said Louisville Terminal Railway Company; to said B. H. Hurt, and that afterwards the said B. H. Hurt, on the 20th day of May, 1901, as per deed recorded in Deed Book 555, page 407, conveyed to the said Central Stock Yards Company of the said tract of land so purchased from the said John Cudahy, and by the said John Cudahy purchased from the Louisville & Nashville Railroad Company certain portions or parcels of the said land, and that no part of the said land so purchased by the said Central Stock Yards Company from the said B. H. Hurt is within the said city of Louisville, but that on the 14th day of September, 1901, there was conveyed to the said Central Stock Yards Company the right, title, claim and interest by said B. H. Hurt, in and to the strip of land 30 feet in width in the use and occupancy of the Louisville Terminal Railway Company under aforesaid unrecorded conveyance of the said John Cudahy to said Louisville Terminal Railway Company.

51 Affiant further says that he was one of the promoters of the Central Stock Yards Company, but that it is not true that he was the chief promoter; but as a matter of fact he took up the matter of the advisability of the construction and putting in operation of another stock yards for the receipt, caring for, handling and sale of live stock of every character raised and produced within the State of Kentucky, and States tributory thereto, but he canvassed the matter with live-stock dealers, raisers and packing establishments throughout the United States and found that the delivery of live stock for market in Kentucky over any other railway entering the city of Louisville than the Louisville & Nashville railroad was to a certain extent at the mercy of the Louisville & Nashville Railroad Company in the matter of making delivery at the Bourbon stock yards, and that such yards were only reached by use of the lines or track of the said Louisville & Nashville Railroad Company; and he further ascertained and found, in connection with his associates, that at some point in or near the city of Louisville a stock yard could be erected more accessible to all of the roads entering the city of Louisville than the Bourbon stock yards, and afterwards effected arrangements, before the construction of the said plant, with the Southern

Railway Company in Kentucky for delivery at such point, so to be erected, of all live stock so consigned without discrimination and whether the same originated on the said Southern Railway Company in Kentucky, or any other line of railway in or out of Kentucky entering the city of Louisville, and that the property upon which the Central Stock Yards Company's plant was and is erected was the most available property to be purchased for such purpose and near the break-up yards of the Louisville and Nashville Railroad Company in south Louisville.

He further says that he and his said associates were advised that under the laws of the State of Kentucky all enterprises and particularly the Central Stock Yards Company, would have to be treated by all railway companies upon an equal basis with like plants or companies, and that under the said laws governing common carriers the raisers, dealers and handlers of live stock in Kentucky and the States tributory thereto believing that deliveries could be made at said Central stock yards, and further believing that by the construction of a modern and well-equipped plant, as has been constructed by the Central Stock Yards Company, the live-stock business in Kentucky could be greatly increased and the interest
52 of the raisers and dealers and handlers of live stock greatly promoted by such company the said parties in interest invested a very large sum of money necessary to the construction and erection of said Central stock yards, and that in asking for deliveries at said Central Stock Yards Company it is not claimed or insisted that any railway company shall make any deliveries thereat if otherwise requested or directed by the raiser, dealer or handler of such live stock so placed upon the market in Kentucky, and that the whole effort of the said Central Stock Yards Company by this suit is to be put on equality with other enterprises of like character without any favoritism shown to it, or discrimination against it.

He further says that he has carefully examined into the facilities of the Louisville and Nashville Railroad Company for making delivery of live stock consigned to the Southern Railway Company in Kentucky for delivery at said Central stock yards, and that inasmuch as the said break-up yards of the Louisville & Nashville Railroad Company *is* within a few hundred yards of the plant of the Central Stock Yards Company he has been informed and knows that live stock can be more speedily delivered to the said Central stock yards, either by the Louisville & Nashville Railroad Company from its break-up yards, or the Southern Railway Company, and especially from all other railway companies entering the city of Louisville, than delivery thereof can be had or made at the said Bourbon stock yards, but that it has not been the purpose of his said yards to ask any discrimination against or favoritism to its said yards on the part of any railroad company entering the city of Louisville.

Affiant further says that under and by the terms of the contract made between the Southern Railway Company in Kentucky and the Central Stock Yards Company establishing the Central Stock Yards Company as the live-stock depot of the Southern Railway Company

in Kentucky, the said Central Stock Yards Company is not made the exclusive live-stock depot of the said Southern Railway Company in Kentucky, where the owners and consignors desire and request that the said live-stock by them so consigned be delivered at some other point in or near Louisville than said Central stock yards, and he files herewith and makes a part of this, his affidavit, to the same extent as if copied herein, a copy of the contract between the said Southern Railway Company in Kentucky and the said Central Stock Yards Company.

Affiant further says that he has read the affidavit of J. W.
53 Byrne, superintendent of Central Stock Yards Company, herein, and personally knows that the responsive part of the said affidavit to the affidavit of Walker D. Hines is true, and he adopts so much of the said J. W. Byrne's affidavit as part of this, his affidavit.

B. H. HURT.

Subscribed and sworn to before me, by B. H. Hurt, this 16th day of January, 1902. My commissions expires the 12th day of January, 1904.

CHARLES JOHANBOEKE,
[SEAL.] *Notary Public, Jefferson County, Kentucky.*

The contract above referred to is as follows:

This agreement, made this May 1, 1901, by and between the Southern Railway Company in Kentucky, a corporation organized under the laws of the State of Kentucky, and hereinafter called the railway company, of the first part, and the Central Stock Yards Company, a corporation duly organized under the laws of the State of Delaware, and hereinafter called the stock yards company, of the second part,

Witnesseth, as follows: The stock yards company is incorporated under the laws of the State of Delaware, with the right to do business in Louisville and Jefferson county, Kentucky, and is the owner of certain property situated on what would be Floyd street if extended, adjoining the right of way of the railway company.

The railway company is a corporation organized under the laws of the State of Kentucky, and besides owning and operating a line of railroad in Kentucky, has connections, directly and indirectly, with divers other lines of railroad in and out of the State of Kentucky.

The railway company desires to establish a general live-stock depot for the receiving and delivery of live stock at Louisville, Kentucky, and the said stock yards company is willing to furnish to the said railway company proper facilities therefor.

Now, in consideration of the premises, it is agreed between the parties hereto as follows:

1. The stock yards company agrees to build, maintain and operate upon its property described as above, modern and complete stock

yards, with all necessary buildings and pens for the com-
54 fortable, safe and convenient handling of stock, and loading and unloading the same, and to continue to maintain and operate the said stock yards during the existence of this agreement.

2. The said stock yards company agrees that it will receive live stock of all kinds from said railway company or for said railway company at its stock yards and premises as aforesaid, and will, for receiving and caring for and delivery of stock, charge not more than fifty (50) cents per car for unloading, and fifty (50) cents per car for loading, to be paid by the said railway company when, and only when, the stock is brought to or shipped from Louisville over the lines of the said railway company including the St. Louis-Louisville line of the Southern Railway Company. No charge is to be made for loading or unloading where less than a car-load rate is charged for the shipment as per waybill; and there the railway company receives only a switching charge from connecting lines, the loading or unloading charge is not to be paid by the said railway company.

3. The stock yards company is to be responsible to the railway company, and to the shipper or consignee, for all accidents in loading or unloading said stock, or while the same is in its possession, and is to indemnify and save harmless the railway company against any loss arising from any injury to said stock in loading or unloading, or awaiting loading or unloading while in its possession; and said stock is to be considered as in the possession of the stock yards company from the time the loaded cars are put on its siding, or from the time the said stock yards company is notified of the readiness of the said railway company to put the said cars upon its said siding, and the said stock yards company is unable, from some disability or fault of its own, to receive the same. But the railway company is to be responsible for any loss which may occur from any default on its part in placing cars at the loading chutes to be unloaded, or taking away the same after they are loaded ready for transportation.

4. The railway company agrees to, and does hereby, establish the premises of the stock yards company as its live stock depot for the purpose of handling live stock to and from Louisville, and agrees that during the existence of this agreement it will not sell, lease, use or license to be used, any of its ground in or adjacent to the city of Louisville, for the establishment of any other stock yard or stock yards or otherwise facilitate the establishment of any stock yard for the said city, and will establish no other live-stock depot at or
55 adjacent to said city, and will not deliver live stock to any other stock yards now or hereafter established in Louisville, unless so positively required and exacted by the shipper. And, in the event that delivery to any other stock yard is so required, the railway company will not absorb, except from competitive points, any part of the switching charge assessed by connecting line or lines.

5. The railway company agrees to establish Louisville rates to and from the premises of said stock yards company on all live stock coming from or going to lines embraced in the following specification, and the said Louisville rates shall include delivery to, or cost

of handling from, the chutes or pens of the stock yards company, namely:

Points on the St. Louis division of the Southern railway, including St. Louis and East St. Louis, and traffic handled via those junctions.

Points on its own lines, including local, as well as junction points.

Points on the Cincinnati, New Orleans & Texas Pacific railway between Cincinnati and Chattanooga, including local, as well as junction points.

Points on connecting lines between its own line and the Cincinnati, New Orleans & Texas Pacific railway, namely, Frankfort, Cincinnati, Lexington & Eastern—Louisville & Atlantic, and such other connections as may hereafter be made.

Points south of Harriman Junction and south of Chattanooga, including business originating on foreign lines, handled by the Southern railway to Harriman Junction, or delivered to the Cincinnati, New Orleans & Texas Pacific railway at Chattanooga, by the Southern Railway Company or by any other line.

6. The railway company agrees to perform switching service between the stock yards company and connections with other lines in Louisville as per the following schedule, and the said switching rates shall include delivery to or cost of handling from the chutes or pens of the stock yards company.

Between the Illinois Central R. R. at 14th and Magnolia streets, or any other connection which may be hereafter established in the city of Louisville, and the Central Stock Yards Company..... $2 per car.

Between the L. H. & St. L. R'y at 14th and Magnolia streets, or any other connection which may be hereafter established in the city of Louisville, and the Central Stock Yards Company ..... $2 per car.

56

Between the B. & O. S. W. Youngtown or any other connection that may hereafter be established in the city of Louisville, and the Central Stock Yards Company..... $2 per car.

Between the L. N. A. & C. or C. I. & L., Youngtown or any other connection that may hereafter be established in the city of Louisville, and the Central Stock Yards Company ..... $2 per car.

Between the L. & N. R. R. at 4th avenue and the Central Stock Yards Company..... $2 per car.

Between the L. & N. R. R. at 7th and Magnolia or such other connection as may hereafter be established in the city of Louisville, and the Central Stock Yards Company except 4th avenue ..... $2 per car.

Between the P. C. C. & St. L. via I. C. R. R. at 14th and Magnolia streets, or such other connection as may hereafter be established in the city of Louisville, and the Central Stock Yards Company as Southern railway proportion of joint switching..... $1 per car.

Between the C. C. C. & St. L. via I. C. R. R. at 14th and Magnolia streets, or such other connection as may hereafter be established in the city of Louisville, and the Central Stock Yards Company as Southern railway proportion of joint switching rate..... $1 per car.

Between the C. & O. R. R. via I. C. R. R. and 14th and Magnolia streets, or such other connections as may hereafter be established in the city of Louisville, and the Central Stock Yards Company as Southern railway proportion of joint switching rate..... $1 per car.

It is further agreed that should the L. & N. R. R. Co. at any time during the existence of this contract, reduce the switching charges to the Bourbon Stock Yards Company then the railway company will meet the situation and making a corresponding reduction to the stock yards company as far as lies in its power.

7. The railway company, desiring to assist in building up the live-stock business to and from Louisville, agrees to place no re-
57 striction son the handling of stock to and from the stock yards company; and that it will switch freely, and with all reasonable promptness any and all live stock offered to it for delivery to the stock yards company or to be switched from the stock yards company to any connecting lines, even though the same may be coming from or going to a competitive point.

8. This contract is to take effect upon fifteen (15) days' written notice on the part of the stock yards company to the railway company, of its readiness and ability to comply with the provisions of this contract, and not later than the first day of October, 1901, and remain in full force and effect for the term of ten years from the said date unless sooner terminated by mutual consent, or by operation of law.

In testimony whereof, the parties hereto have caused these presents to be executed in duplicate, by their duly authorized officers, with their corporato seals affixed, on the day and year first above written.

The answer above referred to is as follows:

United States Circuit Court, Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant. } Answer.

The defendant, The Louisville and Nashville Railroad Company, for answer to the bill of complaint herein denies that the acts complained of therein, or any of them, so far as they are acts of this defendant, are in violation of the Constitution or laws of the United States or statutes thereunder, or any such law or statute. It denies that the Southern Railway Company has three points of physical connection between its tracks and those of this defendant at Louis-

ville, Kentucky. Defendant denies that what is called in the bill of complaint the Bergen & Meehan connection is such a connection, and says that said switch is a private switch belonging to a private party, and not to the Louisville & Nashville Railroad Company, and is not subject to its general use.

58 While there is a connection at Fourth avenue in the city of Louisville, yet this is a wholly impracticable place for the regular interchange of freight in car-load lots; there are *no side tracks at this place, and any car left by one company to be* taken by the other at this point would have to stand on either the main track of the Louisville & Nashville Railroad Company, over which its freight and passenger trains pass, or on the main track of the Southern Railway Company, over which its freight and passenger trains pass, until such car can be taken by the other company. And as a very great amount of business is done over these tracks, it will be utterly impracticable to use this connection as a regular place of exchange between the two said companies.

As to the other point of physical connection referred to in the bill of complaint, to wit, the connection at Seventh and Magnolia streets, this point is about two miles north of southern Louisville and the south Louisville yards referred to in the bill of complaint, and is about one and one-half miles south of defendant's station at Tenth and Broadway. To reach this point of connection, to wit, at Seventh and Magnolia avenue, if the cars were already at south Louisville, it would be necessary to have a switch-engine and crew take them and carry them northwardly about two miles over its tracks referred to from south Louisville toward its aforesaid station at Tenth and Broadway, which is entirely out of the course by which live-stock cars travel from south Louisville to its live-stock depot at the Bourbon stock yards. And if the said cars had come from the East and were in its East Louisville yards, which are very near the Bourbon stock yards, it would be necessary, in order to reach the connection at Seventh and Magnolia, for a switch-engine and crew to take the said cars from the East Louisville yards for about 4½ miles in a southwestwardly direction to south Louisville, and then for another switch-engine and crew to take them from south Louisville about two miles northwardly as aforesaid to the said Seventh and Magnolia Avenue connection. The switch engines which do the business between south Louisville and east Louisville are not the same as those that do the business between south Louisville and the aforesaid Tenth and Broadway station, and the same switch-engines could not do the business on both said lines, because the amount of business done over said respective lines is so great that separate engines and crews are required for the separate lines.

59 Defendant denies that to have changed the destination of stock referred to in the bill of complaint in the manner therein alleged, would have been less inconvenient or burdensome to do than to have taken such shipments to the Bourbon stock yards, or would have made a difference in the haul of five or six miles.

Defendant denies that its actions under the contract between it

and the Bourbon Stock Yards Company referred to in the bill of complaint give an undue or unreasonable preference or advantage to the Bourbon Stock Yards Company over the Central Stock Yards Company or is an undue or unreasonable prejudice or disadvantage to the said Central stock yards or that its action is for the purpose of breaking up the Central Stock Yards Company.

Defendant denies that its refusal to receive, bill, transport, transfer, switch or deliver live stock as described in the bill of complaint has greatly damaged the complainant or is in violation of any law of the United States, or is unjust, unauthorized or unlawful discrimination against complainant, or that unless enjoined from doing so it will result in great or irreparable injury to complainant.

Defendant denies that it requires or compels shippers to consign their stock as directed by it, although it admits that it will not receive live stock when an agreement is demanded that it shall deliver the same to the yards of the Central Stock Yards Company.

II.

Further answering, herein, defendant says at a place such as the city of Louisville it is absolutely essential to the proper management and handling of business that a railroad company handling a large amount of live stock, either bringing it to the Louisville market, or taking it from that market, should have a regular live-stock depot provided with facilities for handling and taking care of that peculiar species of property. Live stock need peculiar attention. They have to be fed and watered at regular intervals to keep them from suffering, and preserving them in good condition. They are liable, when large numbers of them are placed in cars, as is a necessity, to get down and be trampled upon, a liability which, of course, increases the longer they stay confined in one car or other place. Moreover, certain kinds of live stock suffer greatly from extreme heat or extreme cold. In very hot weather it is of the greatest importance in handling such stock to unload them from cars as quickly as possible and throw water upon them in order to reduce their bodily heat, and save their lives. The longer they stay in the cars in which they have been transported, the more liable do they become to injury from any of the causes above mentioned.

On the other hand as to most dead freight, to wit, all except certain kinds of perishable property, it can stand loaded in cars, without material injury, and is not affected by the moving and shifting of the cars as living animals are.

Facts and considerations such as the foregoing make it necessary that there should be a difference between the manner of handling dead freight and the manner of handling live stock, and they make it essential that a railroad company handling a large amount of live stock into or out of a particular market such as Louisville, should have a regular live-stock depot where prompt attention can be given to such live stock by men who are skilled in the handling of this particular property.

Many years ago, to wit, in 1880, which was at least twenty years before the establishment of the stock yards of complainant, The Cen-

tral Stock Yards Company, the Louisville & Nashville Railroad Company, in order to establish a live-stock depot which would enable it to properly handle and care for live stock as above explained, did enter into a written contract with the Bourbon Stock Yards Company of the city of Louisville, for a period of ten years from that date, which contract was afterwards supe-seded by a written contract between the said parties, which took effect on August 1, 1888, and continued by its terms for ten years from that date, and which last-mentioned contract was afterwards extended by agreement in writing between said parties for the term of ten years from September 20, 1898, this being the contract referred to in the bill of complaint herein.

The substance and effect of the said written contract was and is that the Louisville & Nashville Railroad Company established a live-stock depot for the Louisville market at the Bourbon stock yards in Louisville, Kentucky, which yards were contiguous to the lines of the Louisville & Nashville Railroad Company and were situated at a point of convenient access both to the lines of defendant extending from Louisville eastwardly to Cincinnati, Ohio, and also with those of defendant extending from Louisville southwardly to Nashville, Tennessee, and points beyond, over both of which lines the defendant does a very large amount of business,
61 and carries a very large amount of live stock, both in and out of the city of Louisville.

By said agreement defendant agreed that it would not establish, or in any manner facilitate the establishment of, any other stock yards or stock depot in said city, and that it would deliver and cause to be delivered at the Bourbon stock yards, so far as it might lawfully do so, all live stock shipped over its road and consigned to the city of Louisville; and on the other hand, by said contract, the Bourbon Stock Yards Company agreed that it would maintain and keep its stock yards in good condition with sufficient and ample facilities for the handling of all live stock which should come to such yards, with proper conveniences for doing such business, such as are usual and customary in the best conducted stock yards in this country, and that it would always keep on hand at such yards a sufficient number of skilled workmen to perform this class of service, and generally to do such work and labor as is usually provided in stock yards of the best class; and that it would load and unload all live stock that might be brought to such yards; for which services the Louisville & Nashville Railroad Company agreed to pay said stock yards company fifty cents per car. And the said stock yards company further agreed that all charges which it might make for keeping, feeding, or caring for live stock coming to its yards under that contract, either directly or indirectly, should be reasonable, and that it would not charge any more for keeping, feeding and caring for the live stock of its patrons than is charged for the same services or supplies by other stock yards in said city.

In other words, said Bourbon Stock Yards Company, by said contract, agreed to load and unload live stock, and to place the same in the delivery pens when unloaded, for a certain rate to be paid by the

Louisville & Nashville Railroad Company (but not by the shipper). It further agreed for the benefit of the public generally that the charges which it should make for keeping live stock after delivery, and for caring for the same and feeding the same, if the owners should choose to leave their stock at the Bourbon stock yards, should be reasonable.

When live stock is delivered at said live-stock depot at the Bourbon stock yards, it is without any charge to the owner, unloaded and held for the owner for a reasonable time to enable him to get the stock, and either take it away, or arrange for its further care and maintenance. For the loading and unloading of such
62 stock no charge whatever is made against the owner. It is true that after stock is delivered at the Bourbon stock yards the owner has the privilege, if he chooses, to order the Bourbon Stock Yards Company to retain said stock for him and to feed and care for it until he can sell it, or until he desires to take it away to some other point, but this is a matter entirely optional with the owner. He can leave it at these yards or take it away, as he pleases, and the Louisville & Nashville Railroad Company in making the contract just mentioned took pains to secure an agreement on the part of the Bourbon Stock Yards Company, as heretofore stated, that its charges for caring for such stock as might be left with it should be reasonable, and that its attention thereto should be proper.

Since the making of said original contract of 1880 between defendant and the Bourbon Stock Yards Company, it has been faithfully kept by both parties thereto. The Bourbon Stock Yards Company has provided at the said stock yards ample facilities for the handling of all live stock which comes to the Louisville market, and has also provided and maintained there an ample force of men skilled in the handling of such property, and has carefully and efficiently handled the said live stock; and this defendant on its part has always insisted and demanded that all deliveries of live stock by it or to it for the Louisville market should be at its live-stock depot at the Bourbon stock yards.

On the faith of said contracts both parties thereto, to wit, the Louisville & Nashville Railroad Company and the Bourbon Stock Yards Company have expended large sums of money. The Louisville & Nashville Railroad Company has arranged its tracks and many side tracks so as to facilitate in every possible way the prompt delivery of live stock at the said Bourbon stock yards, and the Bourbon Stock Yards Company has erected at great cost ample facilities for the handling at one time of large amounts of stock, and for giving them that peculiar attention which their nature requires, and has provided not only pens and other facilities for ordinary live stock in healthy condition, but has provided entirely separate pens known as "quarantine" pens for live stock coming from those districts which are, by the laws of the United States, required to be kept separate from live stock coming from other districts, all of which has cost large sums of money.

It would greatly disarrange and embarrass the business of the

Louisville & Nashville Railroad Company, and be very bur-
63 densome to it to be compelled to handle live stock for the Louisville market in the manner in which effort is now being made to compel it to do, to wit, deliver the live stock to the Southern Railway Company to be carried to the Central stock yards. As the live-stock business is now done all such live stock coming to the city of Louisville over the lines of the Louisville & Nashville Railroad Company is taken immediately to one place, to wit, its live-stock depot at the Bourbon stock yards. When such live stock comes into the city from the East, and reaches defendant's freight yards in the eastern part of the city, it is then very close to its live-stock depot, to wit, the Bourbon stock yards, and can be quickly and conveniently carried to the same. When such live stock comes to the city from the South, and reaches its freight yards in the southern portion of the city, all of the live stock from such yards can be quickly transported by one switch-engine from said yards at south Louisville to defendant's live-stock depot at the Bourbon stock yards. But if it should be compelled to deliver live stock not only at its live-stock depot, but also to a connection with the Southern railway, it would necessitate handling it in an entirely different manner from that now prevailing. It would be necessary for defendant, when a train containing live stock reaches east Louisville, or south Louisville, to separate the cars containing live stock destined for the Central stock yards from those containing live stock destined for the Bourbon stock yards, which is its live-stock depot, which cars, after being thus separated, would have to be handled by separate engines and crews. If the cars were already in the South Louisville yards then those destined for the Bourbon stock yards would be taken by one switch-engine and carried in a northwestwardly direction over the tracks ordinarily known as the railway transfer tracks to the Bourbon stock yards, while those destined for the Central stock yards would have to be taken by a different engine and crew over different tracks, to wit, the main tracks leading northward towards its passenger and freight depot, until they should reach a connection with the Southern railway at Seventh and Magnolia. And if the cars were all in the East Louisville yards it would be necessary for one engine and crew to take the cars destined for the Bourbon stock yards to the Bourbon stock yards, while a different engine and crew would take the cars destined to the Central stock yards in a southwestwardly direction over the track known as the railway transfer
64 track, to south Louisville, whence another engine and crew would take the same northwardly from south Louisville over defendant's main tracks to a connection with the Southern railway at Seventh and Magnolia.

This method of handling such business would be a great burden upon defendant, and a great interruption of defendant's business. The said main tracks leading from south Louisville to its aforesaid depot and yards near Tenth and Broadway (passing the 7th and Magnolia crossing) are very greatly crowded with traffic even as business is now conducted. As it is now, there is so much traffic over the said tracks between south Louisville and the yards near Tenth and

Broadway, that the switch-engine plying between these two points does not and cannot make special deliveries at side tracks along the way but carries cars without stopping from south Louisville northwardly to the yards near Tenth and Broadway, from which last-mentioned yards special deliveries are made at individual sidings by another switch-engine and crew, where such special deliveries are made at all. But this method of doing business would necessitate too much delay for the proper handling of live stock, and to compel defendant to handle live stock over these tracks with the promptness with which live stock should be properly handled and to make deliveries of same for the Central Stock Yards Company to the Southern railway at Seventh and Magnolia, would, as aforesaid, be a great burden upon defendant, and a very great interruption of its business.

Defendant has not been guilty of any discrimination against plaintiff or any one else. The yards of the Central Stock Yards Company have been constituted the live-stock depot of the Southern Railway Company at Louisville, and this defendant in doing business as it has been doing the same and in refusing to do business as demanded by complainant, has simply insisted upon delivering at its own live-stock depot in the city of Louisville, all live stock brought by it to the city of Louisville, instead of transferring the same to the Southern railway to be delivered at the live-stock depot of the Southern Railway Company.

III.

As to the provisions of the constitution of Kentucky referred to in the amended bill of complaint filed herein, defendant submits that they do not apply to interstate commerce which is the sole subject of the present suit, as such commerce is subject to regulation solely by the Congress of the United States, which has in fact
65 taken action upon the subject and established regulations governing the same, none of which require this defendant to do business as complainant herein seeks to compel it to do.

Wherefore defendant prays to be hence dismissed with its costs.

GIBSON, MARSHAL & GIBSON,
HELM, BRUCE & HELM,
Att'ys for Defendant.

M. H. Smith says he is the president of the defendant, The Louisville & Nashville Railroad Company, and its chief officer, in this State, and that the statements of the foregoing answer are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith, this 17 day of January, 1902. My commission expires at end of present session of the Kentucky senate.

HUSTON QUIN.
N. P., J. C., Ky.

The affidavit of Walker D. Hines (2) above referred to is as follows:

United States Circuit Court, Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Walker D. Hines, being duly sworn, says: I am the same Walker D. Hines who has heretofore made an affidavit in the above-styled case. I have read the affidavit of Mr. S. A. Stalcup filed herein. While it may be true that the Southern railway in Kentucky, at Louisville, delivers to the Louisville & Nashville railroad at its connection with said railroad system loaded cars of the Southern Railway Company for points on the Louisville & Nashville Railroad Company's lines, yet this is true only to whatever extent the Southern railway finds it to its interest to make such deliveries and it does not make such deliveries when the Southern railway conceives that it
66 is to its interest to refrain from doing so. This is true with respect to live stock loaded at points on its lines and destined to the Bourbon stock yards, at Louisville, Kentucky, provided such live stock originates at points not on or reached via the lines of the Louisville & Nashville railroad and for which the Louisville & Nashville Railroad Company does not compete.

Affiant states that car-load lots of live stock originating at the Bourbon stock yards are not transported constantly or frequently to the point of physical connection with the Southern railway destined to points on the Southern railway in or out of Kentucky; that when such car-loads of live stock are destined to points not on or reached via the lines of the Louisville & Nashville railroad, which is very rarely the case, they are so transported and delivered, but only when cars therefor are furnished by the Southern railway. When live stock is brought into Louisville over the lines of the Southern Railway Company and destined to the Bourbon stock yards, at Louisville, Ky., the Louisville & Nashville Railroad Company has heretofore received said cars from the Southern railway and carried them to the Bourbon stock yards when such cars came from a territory into which the lines of the Louisville & Nashville Railroad Company do not run, in other words, when the cars came from non-competitive points, but never when such cars came from competitive points, that is points at which the Louisville & Nashville Railroad Company itself competed for business. Where such cars of stock came from non-competitive points over the Southern railway, or in fact over any other railway entering the city of Louisville, the Louisville & Nashville Railroad Company was willing to receive such cars of stock from such railroad company and transfer and deliver them to the Bourbon stock yards, which is the live-stock depot for the Louisville & Nashville Railroad Company, because the greater part of live stock which is received at the Bourbon stock yards is bought, not by persons residing in the city of Louisville, but either by or for persons residing elsewhere, so that the live stock after being thus purchased at the Bourbon stock yards is again transported from the city of Louisville to other points, espe-

cially to points north of the Ohio river, and as the Louisville & Nashville R. R. Co. itself has a line of railroad running from Louisville eastwardly to Cincinnati, Ohio, where it has business connections with other lines of railroad going north and east it carries a very large amount of live stock out of the city of Louisville for the East and
67 Northeast, and on which it makes a profit. The result of this is that where live stock is brought to the Bourbon stock yards and there sold there is always a probability of the Louisville & Nashville Railroad Company having an opportunity to carry said stock out of the city of Louisville and to make what profit there is in the handling of such business. In this way the use of its terminal facilities in the city of Louisville in gathering live stock into its live-stock depot, whence it will probably be carried out again by the lines of the Louisville & Nashville Railroad Company, is directly contributory to its regular business as a railroad company, and to the profits of such a business. And for this reason it has been willing, as above stated, to use its terminals in the city of Louisville for the purpose of gathering live stock into the Bourbon stock yards, whether the same came in by one railroad company or another, subject, however, to the qualification above explained, to wit, that it has never received and transferred to the Bourbon stock yards live stock coming to Louisville over the lines of other railroads, when it came from points at which the Louisville & Nashville Railroad Company itself competed for business, as it has never been willing in this way to give the use of its terminal facilities in the city of Louisville to its rivals and competitors in business.

But it has never at any time received from the Southern Railway Company live stock shipped from the Central stock yards except where it has done so under a temporary restraining order granted without notice to it in a case pending in the Jefferson circuit court pending an application for a temporary injunction, and, further, in a few cases where it received such live stock under a misunderstanding by some of its employés, which was quickly corrected.

So as to live stock shipped from the Bourbon stock yards, it has to some extent transferred and delivered such live stock to the Southern railway, when as is very seldom the case, destined for points on the Southerm railway at which the Louisville & Nashville Railroad Co. does not compete for business; but never when destined to points at which the Louisville & Nashville Railroad Company does compete for business. And moreover it has never thus delivered live stock when destined for the station called Central stock yards, Kentucky, except when compelled to do so under order of court. It has never in any manner whatever recognized the said Central stock yards, Kentucky, as a station, to, from or at which it would do business of any kind.

68 The conditions under which, as above explained, it has delivered stock originating at the Bourbon stock yards, to the Southern railway to be carried to distant points outside of the Louisville territory, are wholly different from those under which complainant now seeks to compel the Louisville & Nashville Railroad Company to deliver to the Southern railway for the Central

stock yards live stock originating on the lines of the Louisville & Nashville Railroad Company and destined for the Louisville market. As heretofore explained, the Bourbon stock yards are the regular live-stock depot of the Louisville & Nashville Railroad Company at Louisville, and are situate on its line in the city of Louisville at a point convenient of access both to its lines extending eastwardly from the city of Louisville and those extending southwardly from the city of Louisville. This live-stock depot was created by the Louisville & Nashville Railroad Company and it has expended a large amount of money and gone to a great deal of trouble through the course of many years in establishing and perfecting it, because in this way live-stock business is attracted to the Louisville & Nashville Railroad Company out of which it makes a profit as a carrier. And, as heretofore explained, when live stock is sold at this place and is again taken out of the Louisville market the chances are that it will be taken out by the lines of the Louisville & Nashville Railroad Company, if it is to go to a territory through which those lines run. On the other hand, the Central stock yards, as shown by the affidavit of Mr. T. C. Powell, in this case, have been constituted the live-stock depot of the Southern railway, at Louisville, and have been established and will be operated to a very large extent by persons hostile to the interests of the Louisville & Nashville Railroad Company and for the benefit of rivals and competitors of the Louisville & Nashville Railroad Company.

From this it will be seen that when the Louisville & Nashville Railroad Company brings live stock to the city of Louisville it will, if forced to, deliver the same to the Southern railway to be carried to the live-stock depot of the Southern railway, at Central stock yards, be compelled practically to turn over its business to rivals and competitors, and that, too, at a large additional cost and trouble to itself over and above what would be necessary to deliver the same in the regular course of its own business at its own live-stock depot, at the Bourbon stock yards. But on the other hand, when a live-stock shipment originates at the Bourbon stock yards,
69 and is destined to some point distant from the city of Louisville, on the line of the Southern railway, at which point the Louisville & Nashville Railroad Company does not compete for business, a transfer and delivery of such stock by the Louisville & Nashville Railroad Company from the Bourbon stock yards to the Southern railway, is not against the interest of the Louisville & Nashville Railroad Company, and has heretofore been done voluntarily as a matter of accommodation, though I submit it is something which it could not be required by law to do. The conditions under which the Louisville & Nashville Railroad Company has heretofore delivered to the Southern railway live stock originating at the Bourbon stock yards and destined for points distant from the city of Louisville, on the line of the Southern railway at which the Louisville & Nashville Railroad Company does not compete for business, are wholly different from the conditions under which complainant now demands that the Louisville & Nashville Railroad Company deliver to the live-stock depot of the Southern railway at

Louisville, live stock brought into Louisville by the Louisville & Nashville Railroad Company, and which it prefers and desires, and as I submit, has the right to deliver at its own live-stock depot in the city of Louisville.

Affiant further states that from the point of physical connection between the tracks of the Southern railway and the Louisville & Nashville Railroad Company at Seventh and Magnolia streets to the Central stock yards, by the tracks over which stock must be carried, the distance is at least 2.1 miles, and that the distance from the said point of connection with the Southern railway at Seventh and Magnolia streets to South Louisville the distance is 1.71 miles, making a total of 3.8 miles.

Affiant further states that in the regular course of business the time which would be required between the delivery of a loaded car of stock at Seventh and Magnolia streets to the Southern railway and the return of the empty car to that point after it had been taken to the Central stock yards and unloaded, is much more than one or two hours, and that the time could only be kept down to that low limit by the Southern railway performing a special service with respect to the particular car. It is not true, as stated by Mr. Stalcup, that live stock, if properly handled, would, in the course of business, be delivered from South Louisville by way of the Louisville & Nashville Railroad Company and the Southern railway to Central
70 stock yards in less time than it would be delivered from South Louisville by way of the Louisville & Nashville Railroad Company to the Bourbon stock yards. It may be true that the actual distance by the former route is somewhat less than by the latter, but on the other hand, it would require more handling and changing of engines, which would more than offset in point of time the difference in distance between the two routes. Furthermore, it is not true that the distance from South Louisville to the Bourbon stock yards by way of the Louisville & Nashville Railroad Company's tracks is twice or more than twice the distance from South Louisville to the Central stock yards by way of the Louisville & Nashville Railroad Company's tracks and the Southern Railway Company's tracks. The distance from the South Louisville yards to the Bourbon stock yards, including all of the distance to be traveled in carrying a car of stock from the South Louisville yards to the delivery switch at the Bourbon stock yards is 3.94 miles, whereas the distance from South Louisville yards to the Central stock yards, including all of the distance via the tracks to be traveled, is 3.81 miles.

Affiant further points out that when defendant's car is taken to its own depot at the Bourbon stock yards and there unloaded, it has the car immediately available for further service, whereas when taken to the Central stock yards and there unloaded, defendant has to wait until the car is delivered back to it at the convenience of the Southern railway at Seventh & Magnolia streets, and thence has to perform an entirely distinct switching service for the purpose of taking that car to the Bourbon stock yards or elsewhere for reloading.

Affiant states generally in this connection that its arrangements are and must be made for the prompt and expeditious handling of live stock in large quantities to its own live-stock depot, and that nothing like the same economy of time or in the use of its stock cars can be accomplished with respect to cars to be carried to the Central stock yards except by the performance on its part of a special service, which will be very much more expensive, and by the performance on the part of the Southern railway of a similar special service, which it is not in the power of defendant to compel.

Affiant further states that the whole theory of the prompt and economical management of the railroad business must depend upon so systematizing the business as to handle the maximum number of cars with the minimum motive power, and that this system will necessarily be destroyed if defendant, instead of pursuing its
71 practice of regulating its business with respect to its own depots, must adopt the practice of making deliveries of all of its local business at any and all other depots where the particular interest or caprice of individuals may require deliveries to be made.

As to the statement in the affidavit of Mr. T. C. Powell that communications have been received from certain other railroad companies named by him in regard to the establishment of rates on live stock based on the notice from the Southern railway that it had made the Central stock yards its live-stock depot at Louisville, I, of course know nothing about the correspondence between Mr. Powell and those railroad companies, but I do not know and do not now state that not one of the railroad companies named by him has a live-stock depot on its own line in the city of Louisville, as the Louisville & Nashville Railroad Company has. Affiant denies that it is the universal custom between reputable and solvent railroad companies to make deliveries of car-load lots of freight of any kind without exacting pre-payment of freight charges, and on the contrary says that every railroad company holds itself free to make such exceptions as it thinks proper and as it regards to be in its interest, and that it is not only not the universal custom, but it cannot be said to be at this time the general practice for a railroad company to deliver its cars to other railroad companies, since on account of the present scarcity of cars every company does all it can to keep its own equipment on its own lines.

As to the statement in the affidavit of Mr. W. A. Evans, that during the 22 years during which he was in the service of the Bourbon stock yards at Louisville there was much complaint by shippers of delay in having deliveries made of their stock at the Bourbon stock yards, I, of course, am not able to respond specifically, for I do not know to what cases Mr. Evans refers: It is probably true that during these 22 years there were such complaints as there are, and always will be, as to the conduct of everything conducted by human agencies; but I do know and state that the delivery of stock by the Louisville & Nashville Railroad Company at the Bourbon stock yards, has been promptly and efficiently done, and the complaints against its methods of handling the same have been no more than

would have been naturally expected from the conduct of any well-regulated and well-conducted business, and no more than doubtless will be made concerning the deliveries of live stock at the Central stock yards.

72 Affiant states that defendant has as its duty and right and as a practical necessity established a convenient and commodious live-stock depot in the city of Louisville which fully accommodates all the live-stock business from Louisville and all live-stock business coming to Louisville either for local disposition or reshipment. That the Central stock yards is simply an additional establishment for the exclusive purpose of accommodating exactly the same character of business, *i. e.*, live stock for sale locally at Louisville and live stock for shipment or reshipment from Louisville; that the sole purpose of this litigation is to interfere with the natural and orderly handling of the live-stock business by defendant through the medium of its own live-stock depot maintained therefor and to require of defendant expensive and interfering special services for the pecuniary profit of certain capitalists who have invested in the Central stock yards and in the interest of the Southern railway, all of which will be directly at the expense of the legitimate interests of this defendant as above set forth.

WALKER D. HINES.

Subscribed and sworn to before me by Walker D. Hines this 17th day of January, 1902. Commission expires at end of present session of senate.

E. C. TURNER,
N. P., J. C., Ky.

The affidavits of M. H. Smith and M. J. Reedy above referred to are as follows:

United States Circuit Court, Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Milton H. Smith states he is president of the Louisville & Nashville Railroad Company. That he had two interviews with B. H. Hurt, one on December 13th, 1900, relative to the establishment

73 by Mr. Hurt of a new stock yard just outside the city limits of Louisville, Ky. That at one of the interviews, after Mr. Hurt had stated that he proposed to erect a modern, up-to-date stock yard, he was advised by affiant that the Louisville & Nashville Railroad Company had, by contract with the Bourbon Stock Yards Company, made the yards of the latter company its live-stock depot in Louisville, Ky., and would not switch stock for delivery to or shipment from the proposed new stock yard. Whereupon Mr. Hurt stated that it would be no violation of the contract with the Bourbon stock yards because the new yard would be outside of the city of Louisville. In response to which affiant stated to Mr. Hurt

that that was a mere subterfuge and that the Louisville & Nashville Railroad Company would continue to treat the Bourbon stock yards as its exclusive live-stock depot.

M. H. SMITH.

Subscribed and sworn to before me this 17th day of January, 1902. Commission expires at end of present session of senate.

E. C. TURNER,
N. P., Jeff. Co., Ky.

M. J. Reedy states that he is the secretary of Mr. M. H. Smith, president of the Louisville & Nashville Railroad Company. That he has read the foregoing affidavit of Mr. M. H. Smith, distinctly recalls the interviews in question, and that the statements contained in Mr. Smith's affidavit are true.

M. J. REEDY.

Subscribed and sworn to before me, this 17th day of January, 1902. Commission expires at end of present session of senate.

E. C. TURNER,
N. P., Jeff. Co., Ky.

And on another day of said term, to wit: on the 18th day of January, 1902, came the parties, by counsel. The defendant filed the affidavit of C. R. Brent herein. The complainant filed a blank printed form of a live-stock contract. And the cause having been heard on complainant's motion for a preliminary injunction, was submitted and the court not being sufficiently advised took time.

74 At the hearing on said motion complainant read its bill of complaint, and amended bill of complaint, and the affidavits of the following-named parties, and all exhibits therewith, viz: B. H. Hurt, T. C. Powell, S. A. Stalcup, J. W. Byrne, J. E. Miller, W. A. Evans, R. C. Watkins, and a blank printed form of a live-stock contract.

And the defendant read upon said hearing its answer, and the affidavits and exhibits therewith of the following-named parties, viz: Walker D. Hines (two affidavits), M. H. Smith and M. J. Reedy and C. R. Brent.

The affidavit of C. R. Brent above referred to is as follows:

United States Circuit Court, Western District of Kentucky.

CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

C. R. Brent, being duly sworn, says: I am the assistant general freight agent of the Louisville & Nashville Railroad Company. Mr. D. M. Goodwin, the general freight agent, is absent from the city of Louisville. My attention has just been called to a statement in the affidavit of Mr. R. C. Watkins, to the effect that the Louisville & Nashville Railroad Company just prior to the opening of the

Central stock yards notified the Illinois Central Railroad Company that it would switch all stock coming into Louisville over the line of the Illinois Central, and that it is now switching stock coming from Hopkinsville, Ky., and from Memphis, Tenn., both of which are competitive points between the Louisville & Nashville and the Illinois Central Railroad Company.

I keep myself posted with general notices and rules of the office of the character above alleged, and I have never heard of any such notice to the Illinois Central Railroad Company or any other railroad company entering Louisville as is above referred to. Furthermore, I have examined the records of the office and can find no such notice. I am entirely satisfied that none such was given.

75 Furthermore, my own special duties call my attention specially to the matters of switching and transferring cars in the city of Louisville, a matter which is directed from the general freight office, and I can and do say that if any cars have been switched from the Illinois Central railroad to the Bourbon stock yards, coming from Hopkinsville or Memphis, or any other competitive point on the line of the Illinois Central Railroad Company it has been done without authority by those who did the actual work, and without the knowledge of the superior officers of the company having charge of such matters. I have never heard of its being done at all, and I am satisfied that the statement on that subject by Mr. Watkins is a mistake.

C. R. BRENT.

Subscribed and sworn to before me by Mr. C. R. Brent, this 18th day of January, 1902. My commission expires at end of present session of Ky. senate.

HUSTON QUIN,
N. P., J., C., Ky.

The blank printed form above referred to is as follows: (☞ See yellow insert opposite.)

And on another day of said term of said court, to wit: on the 23rd day of January, 1902, came the complainant, by Dodd & Dodd and W. M. Smith, its counsel. Came also the defendant, by Helm, Bruce & Helm, its counsel. The court being now fully advised of the complainant's motion for a temporary injunction herein, delivered a written opinion, which is ordered to be filed, and in accordance therewith, it is ordered, adjudged and decreed that said motion be, and the same is, hereby overruled.

76 The opinion above referred to is as follows:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

United States Circuit Court, Western District of Kentucky.

CENTRAL STOCK YARDS CO., Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Opinion.

The complainant, The Central Stock Yards Co., has very recently established a large and expensive plant for the conduct of its business. It is located on the line of the Southern Railway Co., just outside of the limits of the city of Louisville. Some twelve or more years ago the Louisville & Nashville Railroad Co., having no adequate depot facilities for handling live freight, entered into a contract with the Bourbon Stock Yards Co. (the plant of which was located within the city limits) under which that stock yards company was to erect, and it did erect, and provide at large expense a depot for the defendant for receiving, loading and unloading and shipping live stock, and in consideration of what was done and expended by the Bourbon Stock Yards Co., the defendant agreed that the depot thus provided should be and should continue to be its only live-stock depot in the city of Louisville, and accordingly it has been such ever since, and is now. There is a physical connection between the tracks of the defendant and those of the Southern Railway Co., in the city, and other frieght in car-load lots, by arrangement between the two companies, is interchanged between them within the city limits. The situation being thus, about the time this bill was filed certain car-loads of cattle designed for sale at complainant's yards were shipped to Louisville from States other than Kentucky, and the defendant refused either to bill the freight to the complainant at the Central stock yards, Kentucky, or otherwise than to Louisville simply, and refused to deliver it to the consignee at any other place in the city except at its live-stock depot at the Bourbon stock yards, and refused to deliver it to the Southern Railway Co. at any of the points of physical connection of the two roads, although a demand for all the things thus refused was made
77 upon the defendant by the complainant and also by the shippers of the freight. Whereupon this suit in equity was brought to compel the defendant, by means of a mandatory injunction, to do all the things just mentioned, the claim to the relief thus sought being avowedly based upon the provisions of section 3 of the interstate-commerce act as possibly aided by the provisions of the constitution of Kentucky.

The bill attempts to show the very great injury that would be inflicted upon the complainant if the defendant is not compelled to bill and ship such freight to the complainant direct and to deliver it at points of physical contact in Louisville to the Southern Railway Co., to be transported by it to the complainant's yards. The evidence offered by the complainant was designed more explicitly to show the injury and the details of it which would result to the complainant if the defendant is not compelled to obey the provisions

of the interstate-commerce act, which, it is insisted, are being violated and disregarded by the defendant.

Upon filing the bill the complainant moved the court for an injunction *pendente lite* as prayed for therein, and the court appreciates the importance, to all the parties who are concerned in the litigation, of the very interesting questions which have thus arisen, but the view the court takes of them, particularly at this hearing, makes it unnecessary to state more than one or two of the various grounds upon which the defendant resists the motion.

No demurrer to the bill of complaint has been filed. The defendant has answered, and that pleading has been read as an affidavit on the hearing of the pending motion.

The first inquiry that always presents itself at the outset of every case in the courts of the United States is, has jurisdiction been shown? And this inquiry in this case divides itself into two questions, first, has the court jurisdiction over the subject-matter of the action; and, second, if so, does it come within its equitable powers? The diverse citizenship of the parties to this litigation appears upon the face of the bill, though that is immaterial if the right claimed is founded upon a law of the United States, but does it appear from the bill that equity has jurisdiction of the case as presented by the actual facts stated in that pleading? This inquiry would have to be answered in the negative if other exclusive remedies are provided by law. I do not say that it is impossible to present a state of case
where an injunction might not lie to enforce rights created
78 under the interstate-commerce act, but on the facts stated in
this particular bill of complaint is this such a case? The Supreme Court in the case of Wisconsin, etc., R. R. *v.* Jacobson, 179 U. S., at page 296, used this language:

"At common law the court would be without power to make such an order as was made in this case by the State court. Legislative authority would be necessary in order to give power to the court to render a judgment of this kind." This language would, I think, aptly apply to the orders asked to be made in this case. The rights created by section 3 of the interstate-commerce act did not exist at common law, and the legislation which was necessary to create them can only be found in that act. That legislation seems to have been the sole origin of the rights now sought to be enforced. While some reliance seems to be placed upon the provisions of the Kentucky constitution, I can see no material difference between what that constitution does and what the interstate-commerce act does. This suit, at all events seems to have been brought to enforce the rights, if any, conferred upon the complainant by the congressional legislation referred to, and this raises the very important jurisdictional question that presents itself, *in limine*. Section 3 of the interstate-commerce act is in this language:

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of

traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Sections 8 and 9 of the act are as follows:

"SEC. 8. That in case any common carrier subject to the
79 provisions of this act shall do, cause to be done, or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

"SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

It will thus appear that Congress has not only created a new right by section 3 of the act—a right which did not exist at common law nor by any previous congressional enactment—but has also by the same act expressly provided remedies to protect and enforce that right by sections 8 and 9. Are not those remedies thus provided exclusive of all others? The court is strongly inclined to believe

that this question must be answered in the affirmative upon the very explicit language found in the opinions in the following cases:

Haycroft *v.* United States, 22 Wall. 98.
Farmers', etc., Bank *v.* Dearing, 91 U. S. 35.
Barnett *v.* National Bank, 98 U. S. 555.
Carter *v.* Carusi, 112 U. S. 483.
80 East Tennessee R. R. Co. *v.* The Telegraph Co. 122 U. S. 306.
McBroom *v.* Scottish Co., 153 U. S. 325.

The proposition is probably most clearly stated in the following language from 22 Wall. 98:

"But the same statute which authorized the capture gave a right to certain persons to demand and receive a restoration of their property taken. Coupled with the right to demand was a provision for the remedy by which it was to be enforced. Both the right and the remedy are, therefore, created by the same statute, and in such cases the remedy provided is exclusive of all others. The demandant in this case neglected to avail himself of the remedy provided, and consequently he is now without any. That remedy was the only one — which the Court of Claims or any other court has been authorized to take jurisdiction. It is for Congress, not the courts, to determine whether this jurisdiction shall be extended and other remedies provided."

Are not the courts, in a case such as is presented by this bill, bound to hold that the remedies provided by sections 8 and 9 of the act for violation of rights bestowed by section 3 of the act are as adequate and efficient as Congress chose to provide in connection with the rights it created, and if this be true, is not the complainant limited to the two remedies provided by section 9 of the act, one of which is an action at law for damages and the other is an application to the Interstate Commerce Commission. Why are these remedies not adequate and efficient, and if we should think not, then why is not the judgment of Congress conclusive upon the courts? (See extract above quoted from 22 Wall. 98.) It is true that Judge Hammond, in the case of The Little Rock, etc., Co. *v.* East Tennessee, etc., Co., 47 Fed. Rep., pp. 773–'4, expressed a contrary opinion, even while observing that it was not necessary to pass upon the question. He said, however, that he based his opinion upon that of Judge Jackson, in the case of The Kentucky & Indiana Bridge Co. *v.* Louisville & Nashville R. R. Co., 37 Fed. Rep. 567. But the case then before Judge Jackson was one which not only did not call for the decision of the question, but one in which it does not seem to have been decided at all. On the contrary, that was a case brought to
81 enforce orders of the Interstate Commerce Commission and was based upon section 16 of the interstate-commerce act, thus invoking a remedy expressly provided for by that section of the act itself. The court is referred also to the case of The Interstate Stock Yards Co. *v.* The Railway Co., 99 Fed. Rep. 483, where, it is true, an injunction was granted upon facts somewhat similar to those stated in this case, but the question to which I have alluded was not mooted in that case, and, therefore, not decided by Judge

Baker, and the element of contract between the parties may have been and probably was the controlling factor in the conclusion he reached. In what we may call the Arthur cases, decided by Judge Taft, there was the element of conspiracy to injure as a principal ground of relief, and it does not appear that those cases turned upon the question we are considering.

It seems quite clear when we consider the scheme and purpose of the interstate-commerce act, that there was good reason for Congress to limit the remedies provided by the act. For any violation of the rights of any person as fixed and created by the 3rd section of the act, he might sue at law for the damages, or if the question were a broader one than could be adequately settled in such an action, then an application could be made to the commission created by the act and which was clothed with powers specially adapted to the investigation of such questions. It is only when a ruling has been made by that commission that the powers of a court of equity can, under the act, be invoked for the enforcement of such ruling if the carrier refuses to comply with it. This course is definitely provided for by section 16 of the act. It will thus, it seems to the court, be clearly seen that the fullest, and in the judgment of Congress, the most appropriate remedies were provided for the protection of the rights created under section 3 of the act, viz: First, a suit at law; cond, an application to the Interstate Commerce Commission; and, third, a suit in equity to enforce any ruling of the commission upon such application, and this latter contingency is the only one that authorizes equitable interference unless we ignore the legislation of Congress and appeal to some higher law. Congress alone had power to create the right and to provide the remedies for its vindication. Its action upon the subject can neither be changed nor enlarged by the courts. It was final.

But if we find ourselves safely past these questions then others of equal doubt and difficulty present themselves upon the issues tendered by the defendant. What are the rights of the respective
82 parties to this litigation? As to part of the relief sought one important question is: Can the court compel the defendant carrier to issue bills of lading to points on connecting lines when the defendant itself does not, in the conduct of its business, deem it wise or proper or just to itself to do so? Under the authority of cases like The Little Rock R. R. Co. *v.* St. Louis, etc., R. R. Co., 63 Fed. Rep. 775, it would seem that this question ought to be answered in the negative. Another important inquiry, looking at the case from the standpoint of the defendant is this: What effect on this case must be conceded to rulings like those in the cases of The Covington, etc., Co. *v.* Keith, 139 U. S. 128, and Butchers' and Drovers' Stock Yards *v.* L. & N. R. R. Co., 67 Fed. Rep. 41, which were much like the one now before us, and wherein the courts held that a railroad company was not bound to maintain more than one live-stock depot in a city, nor to make delivery of such freight, when consigned to such city, at more than one live-stock depot.

On the other hand, section 3 of the interstate-commerce act was no doubt intended to subserve a wise and beneficent public purpose,

especially in prohibiting a carrier from subjecting any particular corporation or person to any undue or unreasonable prejudice or disadvantage whatever, and in requiring such carrier to afford all reasonable proper and equal facilities for the interchange of traffic with connecting lines where such facilities do not require any carrier to give the use of its tracks or terminal facilities to another carrier engaged in the same business. The two first of these clauses of the act are appealed to by the complainant, but the defendant insists that the complainant's demands would compel it to give to a rival the use and benefit of its tracks and terminals in the city of Louisville. It may be that the carrier in this case, being a creature of law for the public benefit in large measure, might by a proper proceeding be compelled to do many of the things demanded of it in this action, but it is a proper and well-settled rule that the chancellor should not grant a preliminary injunction unless the case is practically free from serious doubt, especially where defenses are set up.

Paine *v.* U. S. Playing Card Co., 90 Fed. Rep. 543.
Kilburn *v.* Ingersoll, 67 Fed. Rep. 46.
Home Ins. Co. *v.* Nobles, 63 Fed. Rep. 642.

83 It seems to the court in this case that there are too many doubts as to the propriety of the remedy invoked in this litigation and as to the rights of the respective parties to the suit to warrant any such prejudgment as would be involved in the granting of a preliminary injunction. Such questions, therefore, should all be referred to the final hearing of the cause when they can be determined, not upon *ex parte* affidavits, but after a full examination and cross-examination of the witnesses.

Whatever may be the ultimate result, the motion for a temporary injunction is denied and overruled.

Jan. 23, 1902.

WALTER EVANS, *Judge.*

And on another day of said term of said court, to wit, on the 24th day of January, 1902, came again the parties complainant and defendant by their respective counsel of record, and it now appearing to the court that it has not jurisdiction in equity of the matters alleged in the bill of complaint herein, upon consideration thereof, it is now, therefore, by the court ordered, adjudged and decreed that the complainant's bill be and it is now dismissed, but without prejudice to the complainant's right to pursue any other remedies it may have upon the matters alleged by it, to all of which the complainant excepts.

It is further ordered, adjudged and decreed that the defendant have and recover of the complainant its costs herein expended, to be taxed by the clerk, and it may have execution therefor, to all of which the complainant excepts.

Upon the motion of complainant, Central Stock Yards Company, by counsel, and on the filing of its petition for an order allowing an appeal, together with its assignment of errors, it is now ordered by

the court that pursuant to the said petition an appeal be and the same is hereby allowed and granted to the said Central Stock Yards Company from the decree herein complained of in the said petition to the United States circuit court of appeals, for the sixth circuit, and that the amount of the bond upon said appeal be and is hereby fixed at the sum of $250.00.

Thereupon the said complainant, Central Stock Yards Company, tendered its bond with the Ætna Indemnity Company as surety, which said bond after being examined was approved by the court.

84 The petition for an appeal above referred to is as follows:

Circuit Court of the United States for the Western Division of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Petition of Complainant for an Appeal.

Now, comes the complainants Central Stock Yards Company, by its counsel, and conceiving itself to be aggrieved by the decree of the court entered in the above-entitled cause, on the 24th day of January, 1902, whereby it was ordered and decreed that the complainant's bill of complaint herein be dismissed with costs, petitions the court for an order allowing the said complainant, Central Stock Yards Company, to prosecute an appeal from the said decree to the honorable United States circuit court of appeals for the sixth circuit, under and according to the laws of the United States in that behalf made and provided, and that an order be made fixing the amount of security which the said complainant shall give and furnish upon such appeal, and that upon the giving of such appeal bond the same be examined and approved by this honorable court and made a part of the record herein. And your petitioner will ever pray.

W. M. SMITH,
DODD & DODD,
Attorneys for Complainant.

Appeal allowed and bond fixed at $250.00.

WALTER EVANS, *Judge.*

85 The assignment of errors above referred to is as follows:

Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Complainant's Assignment of Errors.

Now comes the complainant, Central Stock Yards Company, and files the following assignment of errors on which it will rely upon its appeal from a decree made by this honorable court on the 24th day of January, 1902, dismissing the bill of complaint herein. The said complainant assigns as errors to be relied on by it upon this appeal from the said decree the following:

I.

The said court erred in deciding that complainant's remedy at law was adequate, and that its bill was without equity.

II.

The said court erred in dismissing the complainant's bill of complaint on the ground that sitting as a court of equity the said court had no jurisdiction to entertain the said bill or to grant the relief therein prayed for.

III.

The said court erred in deciding that before it, sitting as a court of equity, could grant any relief to the complainant, the complainant must first apply for and obtain an award in its favor from the Interstate Commerce Commission, and could then for the first time be allowed any standing in a court of equity and only for the purpose of enforcing said award.

IV.

The said court erred in dismissing the said bill of complaint and adjudging the costs of this suit in favor of the defendant against the said complainant.

86

V.

The said court erred in refusing to grant the relief accordingly as prayed and moved for by the complainant.

Wherefore, the said complainant, Central Stock Yards Company, prays that the foregoing be filed as its assignment of errors, and that upon the hearing hereof in the said circuit court of appeals for the sixth circuit, the said decree be reviewed and reversed with costs, and as in duty bound the said complainant will ever pray.

W. M. SMITH,
DODD & DODD,
Attorneys for Complainant.

The above bond referred to is as follows:

Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Bond of Complainant on Appeal.

Know all men by these presents, that we, the complainant, Central Stock Yards Company, as principal, and The Ætna Indemnity Company, as surety, are joint- and severally held and firmly bound unto the above-named Louisville & Nashville Railroad Company in the sum of $250.00 lawful money of the United States of America, to be paid to the said Louisville & Nashville Railroad Company, its successors and assigns, for which payment well and truly to be made we bind ourselves, all and each of our heirs and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 24th day of January, one thousand nine hundred and two.

The condition of the above obligation is such that whereas the said Central Stock Yards Co. has taken an appeal to the United States circuit court of appeals for the sixth circuit for review of the decree rendered and entered by the said circuit court of the United States for the western district of Kentucky, sitting at Louis-
87 ville, which decree was entered in the above-styled suit on January 24th, 1902.

Now, therefore, the condition of the above obligation is such that if the above-named Central Stock Yards Company, complainant in the said suit, and appellant on the said appeal, shall prosecute the said appeal to effect and answer all damages and cost if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

[SEAL.] THE CENTRAL STOCK YARDS COMPANY,
By B. H. HURT, *President.*
THE ÆTNA INDEMNITY COMPANY,
By ALEXANDER GILMOUR,
Attorney-in-fact.

Examined and approved.
WALTER EVANS, *Judge.*

WESTERN DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States, for the western district of Kentucky, at Louisville, do hereby certify that the foregoing 94 pages contain a true and correct transcript of the record and proceedings in the case of Central Stock Yards

Company *vs.* Louisville & Nashville Railroad Company, No. 6903, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 28th day of January, A. D. 1902.

[SEAL.]

THOS. SPEED, *Clerk.*

Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Complainant,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant. } Citation.

The President of the United States of America to the Louisville & Nashville Railroad Company, Greeting:

You are hereby cited and admonished to appear at the United States circuit court of appeals for the sixth circuit, to be held
88 at the city of Cincinnati in the State of Ohio, on Tuesday the 4th day of February, 1902, pursuant to an appeal this day granted by the circuit court of the United States for the western district of Kentucky, wherein The Central Stock Yards Company is appellant, and you are appellee, to show cause, if any there be, why the judgment or decree, in the said appeal mentioned dismissing the complainant's bill of complaint with costs, should not be corrected, revised and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 24th day of January, 1902, and of the Independence of the United States 126.

[L. S.]

WALTER EVANS, *Judge.*

Received at Louisville, Ky., Jan. 24th, 1902, executed the within citation on the Louisville and Nashville R. R. Co., by delivering a true copy hereof to Milton H. Smith, president of the Louisville & Nashville R. R. Co., at his office in Louisville, Ky.

This Jan. 28th, 1902.

A. D. JAMES,
U. S. Marshal,
By W. A. BLACKBURN,
Chief Deputy.

Fees	
Exp	$2 00
	10
	$2 10

No. 1070. Citation. Filed Feb'y 1, 1902. Frank O. Loveland, cl'k.

89 And afterwards to wit on February 3rd, 1902 præcipe for appearance of counsel was filed which reads and is as follows:

Præcipe for Appearance.

United States Circuit Court of Appeals for the Sixth Circuit.
October Term, 1901.

CENTRAL STOCK YARDS CO.
vs.
LOUISVILLE & NASHVILLE R. R. Co. } No. 1070.

To the clerk of said court:

Please enter *my* appearance as counsel for the appellant.

J. C. DODD.
W. M. SMITH.
JOHN L. DODD.

☞NOTE.—Must be signed by a member of the bar of Supreme Court of the United States or of any circuit court of the United States, and by individual (not firm) name.

90 And afterwards to wit on April 8th 1902, an order was entered in this cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
L. & N. RAILROAD CO.

A motion to advance this cause for hearing is submitted by appellant's counsel Mr. W. M. Smith.

And afterwards to wit on April 14th 1902, an order advancing said cause was entered which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
L. & N. R. R. Co.

This cause is advanced to be heard May 15th proximo.

And afterwards to wit on May 15th 1902 an order was entered in said cause which is in the words and figures as follows:

91 United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
LOUISVILLE & NASHVILLE R. R. Co. } Before Lurton, Day, & Severens, JJ.

This cause is argued for appellant by Mr. J. C. Dodd and for appellee by Mr. Helm Bruce and is continued until tomorrow at 9.30 a. m.

And afterwards to wit on May 16th, 1902 an order was entered in said cause in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
LOUISVILLE & NASHVILLE R. R. Co.

This cause is further argued for appellee by Mr. Helm Bruce and Mr. Ed Baxter and for appellant by Mr. W. M. Smith and is submitted to the court.

And afterwards to wit on July 8th 1902 a decree was entered in said cause which reads and is as follows:

Decree.

92 United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
vs.
LOUISVILLE & NASHVILLE R. R. Co. } No. 1070.

Appeal from the circuit court of the United States for the western district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Kentucky, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause be and the same is hereby affirmed with costs.

93 And afterwards to wit on July 30th 1902 an opinion was filed in said cause clothed in the words and figures as follows:

Opinion.

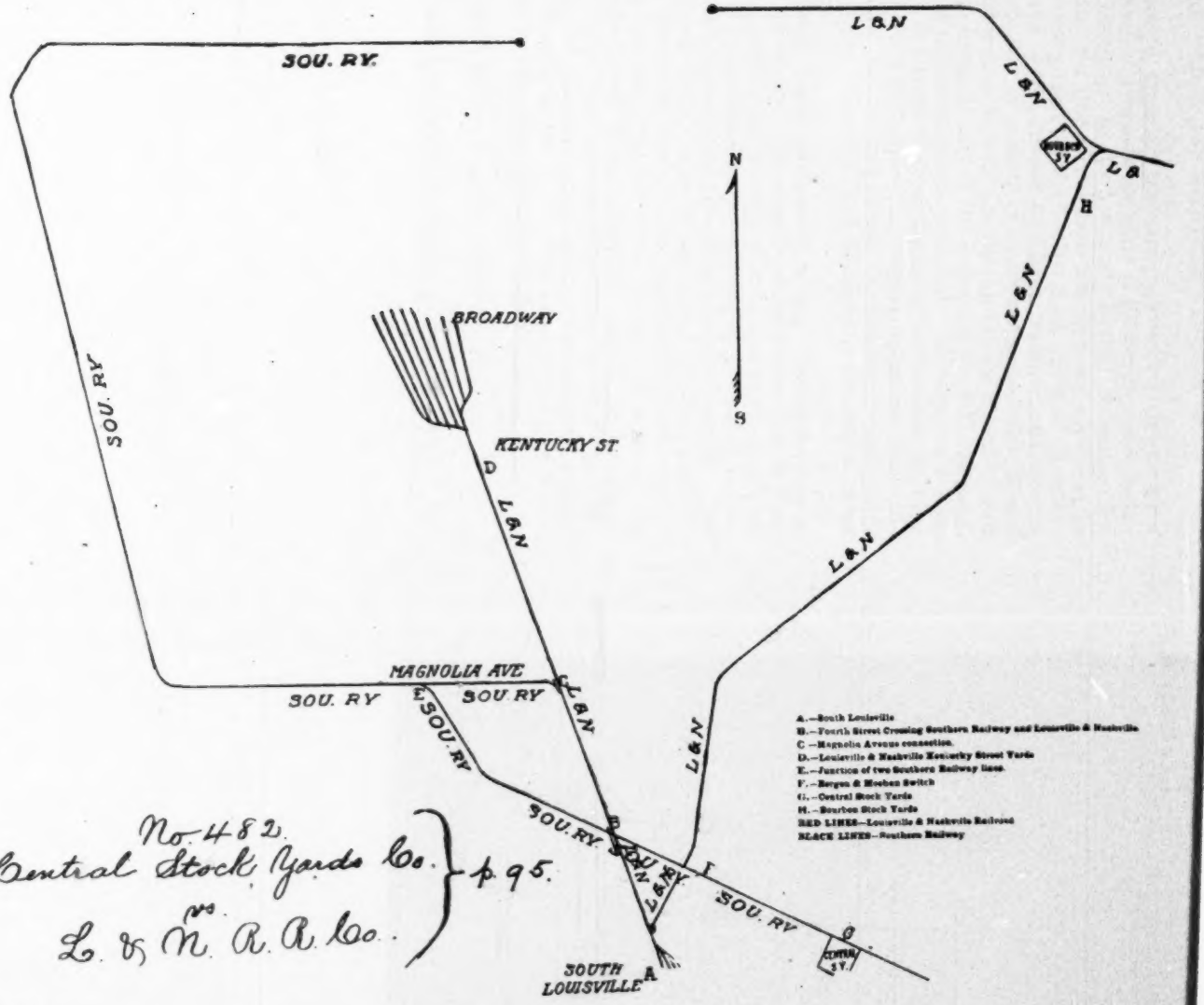
94 United States Circuit Court of Appeals, Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE AND NASHVILLE RAILROAD Company, Appellee. } No. 1070. Appeal from the Circuit Court of the United States for the Western District of Kentucky.

Submitted May 16, 1902; decided July 8, 1902.

Before Lurton, Day, and Severens, circuit judges.

This — a bill filed by the stock yards company against the railroad company seeking a mandatory injunction requiring the railroad



No. 482.
Central Stock Yards Co. } $.95.
vs.
L. & N. R. R. Co.

company to receive, transfer, transport and deliver shipments of live stock tendered to it outside the State of Kentucky, consigned or tendered to be consigned to any points of physical connection between its line and the line of the Southern Railway Company in Kentucky; and designated for the Central stock yards or its station in Kentucky; and in like manner to deliver, transport and transfer such consignment to any person to whom it may be billed at said stock yards; and further to recognize the right of the consignor and the consignee to change at any of the stations of the said company, the destination of said shipment, so as to make delivery in the manner agreed upon at a point of physical connection between the lines of the Southern Railway Company and the Louisville and Nashville Railway Company for delivery to said Central stock yards; also seeking a temporary injunction and damages in the sum of three thousand dollars.

The Central Stock Yards Company is a duly organized corporation authorized to conduct a general business in the State of Kentucky. The Louisville and Nashville railroad operates in the States of Kentucky, Tennessee, Alabama, Georgia, Mississippi, Louisi-
94½ ana, Florida, Indiana and Illinois as a common carrier. The Central Stock Yards Company has located its plant just outside the city of Louisville where it has facilities for receiving, unloading, feeding and caring for live stock. This plant is about nine miles from the terminus of the Southern railroad in the city of Louisville. It is further alleged that the Southern Railway Company has established a station, known as the "Central stock yards," at or near the location of the plant. The situation may be shown in a general way by the rough draft herewith shown.

(Here follows diagram marked p. 95.)

96 The points of physical connection between the lines of the Southern Railway Company and the lines of the defendant are shown at F, B and C of the diagram. The defendant company refused to receive stock from points outside the State of Kentucky, billed to the Central Stock Yards Company or to any person in its care, asserting the right to deliver all live stock designated for Louisville passing over its own lines, at the Bourbon stock yards, shown on the map at H, with which company the defendant has a contract, the Louisville and Nashville Railway Company agreeing that it would not lease, rent or sell within the city of Louisville for the establishment of any other stock yards, or establish any other stock yards within or adjacent to said city. That it will deliver, and cause to be delivered, so far as it legally may, all live stock shipped over the lines of the defendant company consigned to the city of Louisville; and will load all stock for other persons at said city at said yards, providing that if the terms of such agreement should be invalidated by any judgment or order of the court, or by legislative requirement, then the stock yards company should have no claims for damages against the railroad company arising out of the terms of the contract.

The Central Stock Yards Company is a corporation, and was established by an agreement with the Southern Railway Company, making it the stock yards of that company in Louisville and vicinity. It is claimed that the complainant has a right to compel the shipment of live stock and transfer of cars consigned to the Central Stock Yards Company at one of the points of physical connection with the Southern railway upon there grounds:

(1.) That such is the legal duty of the defendant company as a common carrier.

(2.) Because of the requirements of the act to regulate commerce, passed by the Congress of the United States on February 4th, 1887, known as the "interstate-commerce act."

(3.) By amended bill, that such is the duty of the corporation under the constitution and laws of the State of Kentucky.

The circuit court dismissed the application for a temporary injunction, and afterwards dismissed the bill for want of jurisdiction in equity. Complainants appeal.

DAY, *J.*, delivered the opinion of the court.

The discussion in this case has taken a wide range. In our
97 opinion it may be disposed in the solution of a few leading propositions, the first being, is there a right independent of a statute, to require the railroad company to receive the live stock for shipment to the Central stock yards and to deliver the cars at a point of connection with the Southern railroad in Louisville for transportation thereto.

It is apparent from a consideration of the testimony that the Central Stock Yards Company is primarily the stock yards of the Southern Railway Company. It is true the location is just beyond the city limits, but the business to be transacted is the Louisville business in the sale and forwarding of stock in these yards. The contract through which the Central stock yards originated is in the record, and there we find an agreement between the Southern Railway Company and the Central Stock Yards Company in which is recited the desire of the railroad company to establish a general stock depot "for the receiving and delivery of stock at Louisville, Kentucky." After stipulations as to the reception and care of the stock, it is further provided that the railroad company will establish the premises of the stock yards company as its stock depot for the purpose of handling live stock to and from Louisville, and agrees not to sell, lease or use or license to be used any part of its ground in or adjacent to Louisville for the establishment of any other stock yards, or otherwise facilitate the establishment of any other stock yards in the city, and will establish no other stock-yards depot at or near said city. The railroad company further agrees to establish Louisville rates to and from the premises of the said company on certain lines. It is apparent from these stipulations of the contract that the parties understood that the Central stock yards was intended to be, as in fact it is, a Louisville stock yards, to be used, as is recited in the contract, in building up the live-stock business to and from Louisville. We have no question that the Central stock yard is as distinctly a

yard for the transaction of the business of receiving, keeping and selling of stock at Louisville as is the Bourbon stock yards, established for the same purpose by contract with the defendant company. The question on this branch of the case is thus narrowed to the consideration of the rights of the complainant to require of the Louisville and Nashville Railway Company shipments and transfers to the Central Stock Yards Company over the connection with the Southern railroad, of live stock whose destination is Louisville. The peculiar duties of a common carrier of live stock are pointed out by Mr. Justice Field in North Penn R. R. Co. *v.* Commercial Bank of Chicago, 123 U.
98 S., 727. The animals cannot be turned loose or left without food or shelter in cars standing on the railroad tracks or sidings. They must be placed in suitable quarters where they can be fed and cared for under the charge of competent agents. The nature of the property requires these services, essential to the discharge of the duty of the carrier in the safe transportation and delivery of live stock. For this purpose it is the duty of the carrier to make provision by suitable yards and proper equipment and competent persons to manage and control the care and delivery of the live stock. We perceive no reason why this duty cannot be discharged by contract with proper persons or companies who shall undertake the same under the responsibility of the carrier. Such a contract was enforced in Terre Haute R. R. Co. *v.* Struber, 109 U. S., 381. Justice Harlan observed in Stock Yards Company *v.* Keith, 139 U. S., 128–'36:

"It did not concern them (the complainants) whether the railroad company duly maintained stock yards or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under the obligation to the public to provide."

There is no showing of the inadequacy of the Bourbon Stock Yards Company in the matter of accommodations for receiving and caring for cattle. The defendant has there made provisions ample for the care of such stock with a company obligated to discharge the duties in this behalf required by the law of common carriers. Is the defendant obliged by law to make Louisville delivery at other points by making connections for other Louisville stock yards? We think this question must be answered in the negative. In all intents it was so answered by this court in Butchers' and Drovers' Stock Yards Company *v.* Louisville and Nashville Railway Company, 67 Federal, 35. In that case the railroad company had entered into a contract with the Union Stock Yards Company which made it the stock-yards depot of the Louisville and Nashville Railway Company at Nashville. A spur track had been run down Front street in Nashville for the accommodation of freight shippers not handling live stock. About forty feet from this track the Butchers' and Drovers' Company established an independent stock yards. The Butchers' and Drovers' Company sought a mandatory injunction to compel the railroad company to build or allow to be built, a side track connecting the spur track with the complainant's stock yards,

there to deliver and receive cattle consigned or shipped by
99 the complainant. The obtaining of the right of way and the expense of building the side track were not required of the defendant company and are not elements essential to the disposition of the case in the opinion rendered by Judge Taft. The contention of the railroad company, that, having established a live-stock depot in Nashville, for the reception and delivery of stock in that city, it could not be compelled to receive and deliver from another depot in the city, was sustained. Judge Taft quotes from the opinion of Judge Harlan in Stock Yards Company v. Keith, 139 U. S., 128, as follows:

"We must not be understood as holding that the railroad company in this case was under any legal obligation to furnish, or cause to be furnished, suitable and convenient appliances for receiving and delivering live stock at every point on its line in the city of Covington where persons engaged in buying, selling or shipping live stock choose to establish yards. In respect to the mere loading and unloading of live stock, it is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the business at that city. So far as the record discloses, the yards maintained by the appellant are, for the purposes just stated, equal to all the needs, at that city, of shippers and consignors of live stock; and, if the appellee had been permitted to use them without extra charge for mere 'yardage,' they would have been without just grounds of complaint in that regard, for it did not concern them whether the railroad company itself maintained stock yards, or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under obligation to the public to furnish. But as the appellant did not accord to appellees the privileges they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stock yard of its own for shippers and consignees, the court below did not err in requiring the railroad company and the receivers to receive and to deliver live stock from and to the appellees at their stock yards in the immediate vicinity of the appellant's yards, when the former were put in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish. It was not within the power of the railroad company, by such agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

We think this language is no less applicable to the case under consideration. The Louisville and Nashville Railway Company has by contract arranged for the discharge of its duties to shippers
of live stock at the Bourbon stock yards. The proof does not
100 show that these accommodations are inadequate or the charges illegal. It would doubtless be convenient and promote the business of dealers and shippers if other facilities were afforded, but we find in the law, nothing aside from a positive statute, that requires more ample provision at the hands of the respondent.

It is further alleged in the bill that the refusal to make the desired shipping and transfer of stock to the yards of the complainant is a violation of section three of the interstate-commerce act, which provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give undue or unreasonable preference or advantage to any particular person, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their respective lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The claim is that, having granted certain rights and privileges to the Bourbon Stock Yards Company, this section guarantees equal privileges to the Central Stock Yards Company. This construction of the act is not sustainable. It is the duty of the railroad company to provide reasonable facilities for the unloading and care of live stock. This duty it might discharge by itself furnishing sufficient facilities, or it might contract with others to make such provision. The respondent has chosen the latter course. By contract with the Bourbon Stock Yards Company it has provided facilities for the care of stock received at Louisville. These facilities cannot be denied to some and afforded to others. But this is far from saying that it was the purpose of the law to dictate to common carriers the means by which it shall discharge its obligations to shippers. To hold otherwise would be, having regard to the present case, to require the railroad company to make connections with as many stock yards companies as may see fit to provide facilities equal
101 to those furnished by the company or its agents. This would be carrying the act far beyond its terms and purposes. Kentucky and I. Bridge Co. *v.* Louisville and N. R. R., 37 Federal 621.

These considerations dispose of this branch of the case. If it could be regarded as one involving the right to require one railroad to interchange traffic with another, the position of the complainant would be equally untenable. At common law a railroad company is only bound to transport freight to its own terminus. The rule is thus stated in A. T. and S. F. R. R. *v.* Denver N. O. R. R. Co., 110 U. S., 41:

"At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, deter-

mine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of his contract, and if he holds himself out as a carrier beyond his line, so that he may be required to carry for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the half of others, than he would occupy if the means of transportation employed were all his own. He certainly may select his own agencies and his own associate for doing his own work."

It is averred in the bill that the Southern Railway Company has notified the respondent that it would be and now is willing to be responsible from points of physical connection with the Louisville and Nashville railroad for the delivery of suck live stock and the collection of all charges on the same and would promptly return to such points of connection all empty cars, and would account for all freight charges collected in the usual way. This may be true, and would possibly be a reasonable arrangement. But have the courts the right in the absence of statute, to dictate to carriers the contracts they shall make in the interchange of traffic, and to require such to be carried out as the courts deem reasonable? The billing and transfer of freight from outside points over the two railroads is a matter of arrangement between them. The proportion of the joint tariff each shall receive, the handling of cars, the liability of one to the other and other matters are to be determined by the contract between the parties. Each controls its own railroad and may determine for itself upon what terms it will unite in a joint tariff. No arrangement exists with the Southern railroad for the trans-
102 portation and delivery of cars of live stock to the Central stock yards, if that can be assumed to be a station on the line of the Southern railroad, nor do we think a court of equity has the power to make one and supervise its execution, nor has this right been conferred upon the courts by the interstate-commerce act. This doctrine is so thoroughly established as to require no more than the citation of the authorities in support of it: A. T. & S. Railroad *v.* D. N. O. Railroad, 110 U. S. 667; Express cases, 117 U. S., 1; Pullman Palace Car Co. *v.* Missouri Pac. R'y Co., 115 U. S., 587; N. Pac. Railroad *v.* Dustin, 142 U. S., 492; Kentucky and I. Bridge Co. *v.* Louisville and N. R. R., 37 Fed., 567; L. and N. R. R. Co. *v.* St. L. M. R. R., 41 Fed., 559; Oregon Short Line Co. *v.* N. P. R. R., 51 Fed., 475; St. L. Drayage Co. *v.* L. and N. R. R., 65 Fed., 38; Allen and Lewis *v.* Oregon R. and Nav. Co., 98 Fed., 16.

It is further alleged that the duty of complying with the complainant's demand rests upon the defendant company, because of the requirements of the constitution of the State of Kentucky and the laws passed in pursuance thereof. Assuming, without deciding, that the Kentucky constitution and legislation require the defendant company to receive, deliver, transport and transfer freight to any point that is in physical connection with the tracks of another company, so that the complainant has, as to traffic originating in Kentucky, the right to require that the shipment be received and transported in accordance with the prayer of the bill, the question

remains, Have the Kentucky constitution and statutes any operations beyond the limits of that State? The interstate-commerce clause of the Federal Constitution has given rise to much litigation and frequent construction by the Supreme Court. It is thoroughly settled that the power of Congress to regulate commerce is plenary, and no State has the right to regulate purely interstate commerce. On the other hand, the State has the right to make provisions as to matters within its own boundaries intended as aids to commerce, not thereby regulating interstate traffic. Without undertaking to reconcile or consider the numerous decisions we may refer to The County of Missouri *v.* Kimball, 102 U. S., 691. Mr. Justice Field, with his usual clearness, has called attention to the sound rules of construction to determine what is and what is not within the power of a State:

"Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined,
103 and its local aids or instruments or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase sale and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adapt such a system. Action upon it by separate States is not, therefore, permissible." (Page 702.)

It is within the power of a State to require connecting tracks between two railroad companies at an intersection for the transfer of cars used in the local business of such lines of railroad. This may have been necessary for the accommodation of State commerce. Wisconsin R. R. *v.* Jameson, 179 U. S., 287. So it is competent for a State to require a railroad company to stop a certain number of trains each day at stations having a certain number of inhabitants, within the State. Such regulations do not interfere with the delivery or transportation of passengers traveling between States in such wise as to be regulations affecting interstate traffic. The statute simply amounted to requiring three trains of the company to stop at the stations named each day. Lake Shore *v.* Ohio, 173 U. S., 123. Likewise a State may require a telegraph company to deliver a message. Western Union *v.* McJames, 162 U. S., 650.

But it is thoroughly well settled that a State may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the States.

In the case at bar, we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky constitution could be given any such construction it would follow it could regulate interstate commerce. This it cannot do.

We reach the conclusion that no case was made in the bill justifying the relief prayed for, and that there was no error committed in dismissing the bill.

Judgment affirmed.

104 And afterwards to wit on August 25th 1902 a petition for rehearing was filed which reads and is as follows:

Petition for Rehearing.

105 United States Circuit Court of Appeals, Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Plaintiff in Error,
versus
LOUISVILLE & NASHVILLE RAILROAD Co., Defendant in Error. } No. 1070.

Appeal from the circuit court of the United States for the western district of Kentucky.

Petition for Rehearing.

J. C. Dodd, W. M. Smith, counsel.

Filed Aug. 25 1902

FRANK O. LOVELAND, *Clerk.*

106 United States Circuit Court of Appeals, Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Plaintiff in Error,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defenant in Error. } No. 1070. Petition for Rehearing.

Appeal from the circuit court of the United States for the western district of Kentucky.

Having carefully examined the opinion of the honorable court, we think that with propriety we may ask the court to consider whether this case be not one in which it would be proper to grant a rehearing to the plaintiff in error on the grounds hereinafter stated.

Said opinion, as understood, is based largely upon the cases of

Stock Yards Co. *v.* Keith, 139 U. S. 228–'36.

Butchers' & Drovers' Stock Yards Co. *v.* Louisville & Nashville Railroad Company, 67 Fed. Rep. 35.

Penn. R. R. Co. *v.* Commercial Bank of Chicago, 123 U. S. 727.

While the doctrine enunciated in these decisions is not questioned, it is respectfully submitted that under the facts in the case at bar said doctrine is not applicable.

It is earnestly insisted that these cases go no further than to determine that owing to the nature of these live-stock ship-
107 ments, facilities, other than those for dead freight, must be provided by the common carrier where such live freight is

required *to be loaded or unloaded on its lines.* Such facilities may be furnished by others than the common carrier, and if adequate they will meet the requirements of the law; and such carrier cannot be required, in any city, to furnish more than one depot where stock is to be loaded or unloaded; and it may, as a matter of right, deliver all such live freight coming over its lines at such depot, *provided the destination of said shipment terminates on the lines of said common carrier at said city.*

Upon a critical examination of these cases it is not thought that the law upon this proposition therein established is any broader than herein stated, that is, that the necessity for such live-stock depot, and the right on the part of the carrier to make delivery of shipments thereat, is dependent *solely* upon the question whether or not said common carrier is required *to load* or *unload said live stock on its own lines, at said city.*

The reason for the doctrine established by these cases is apparent; where a shipment of live stock is made, destined for delivery on the lines of a common carrier, the consignor has a right in law to demand that facilities be furnished by said common carrier at one point at said destination on its lines for the safe *unloading* of said stock, while on the other hand, as the handling of such live freight is more hazardous than that of dead freight, and additional facilities and service are required of the common carrier to *load* and *unload* same, said common carrier has a right to establish its live-stock depot and to require that all shipments of live stock over its lines, *where delivery is to be made by it by loading or unloading same on its lines,* shall be done at said depot so established. But if it be conceded that the live stock is neither to be *loaded* or *unloaded on the lines of the initial common carrier*, but is to be delivered *in bulk*, without change of cars, to a connecting carrier for delivery on its line *then both the questions of a live-stock depot on the initial carrier's line and the right of such carrier to deliver thereat* are eliminated
108 from the case, and the three decisions referred to have no bearing whatever upon the question at issue.

It is thoroughly understood that carriers of live stock are required to furnish facilities for unloading such stock for the purpose of feeding and watering as required by law, but that question does not arise and is not involved in any way whatever in the case at bar, and is therefore not considered in the statement of the propositions of law.

It is respectfully submitted that the case of Penn. R. R. Co. *v.* Commercial Bank of Chicago, 123 U. S. 727, has but slight bearing upon the case at bar. It simply states a general proposition of law as to the care in handling live stock. The Butchers' & Drovers' case, 67 Federal Reporter, and the Keith case, 139 U. S., deal solely with the proposition of compelling a common carrier to furnish, permit, or maintain *more than one live-stock depot on its lines at a given point.* Said cases do not touch upon the propositions such as presented by the case at bar, that is, where the initial carrier is not required to unload, but where it is simply sought to be compelled to

receive for shipment over its lines and to deliver to a connecting carrier for delivery by said connecting carrier.

In the case at bar, plaintiff in error simply asks that the Louisville & Nashville Railroad Company be compelled to receive when tendered any live stock, and to bill, transport, switch, and deliver the same, as ordered by its consignor, to the Southern Railway Company at any point of physical connection between the tracks of said Louisville & Nashville Railroad Company and the tracks of the Southern Railway Company in Kentucky, at Louisville, Kentucky, for delivery by the Southern Railway Company to the Central stock yards, etc., and to recognize the right of the consignor, consignee, and owner to change the destination of shipments of live stock. In the bill it is alleged, and not denied by the answer, that the said two railway systems have heretofore received and delivered, and are now receiving and delivering, each one to the other and
109 from the other, freight (other than live stock consigned to the Central stock yards) in car lots and less for delivery to consignees on the track or tracks of the one or the other. By the affidavit of S. A. Stalcup (Record, pages 29 to 31) this allegation is sustained, and while the defendant *fails to deny same in its answer* in the affidavits of Mr. Hines (pages 16 and 65 of the record) he in substance admits this allegation, but says that said shipments were only made as to live stock going to and coming from *non-competitive points*, but as to dead freight he makes no exception whatever.

At common law a common carrier was only required to carry freight tendered it to the end of its lines, but independent of the interstate-commerce act, common carriers were bound to serve any and all alike, and to carry any and all freight tendered to them within the line of their duties, and upon payment of their usual and customary charges, to deliver such goods to a connecting carrier where the consignment was destined to a point beyond the lines of the initial carrier. And further, at common law, it was and is the duty of a common carrier not only to deliver the goods to a connecting common carrier when destined to a point on the line of such connecting carrier, but its duty at common law was not fully performed until the initial carrier transmitted with the delivery to the connecting carrier *whatever instructions that may have been given to it as to the ultimate destination of the said consignment.*

When the consignment is delivered to a connecting carrier with instructions as to its ultimate destination, the liability of the initial carrier is ended, and it is a matter solely between the connecting carrier and the consignor for further carriage of the goods by such connecting carrier, and the compensation to be paid to such connecting carrier.

This common-law duty of a common carrier is well expressed by Mr. Elliott in his work on "Railroads," vol. 4, sections 1432 and 1440, as follows:

110 "SEC. 1432. As a general rule, no carrier is bound by law to accept and carry goods beyond the terminus of its own line. In the absence of any agreement, either express or clearly implied, for transportation beyond its own line, the common-law duty of an

independent carrier is performed by safely transporting the goods over its own line and deliv-ing them to the consignee or connecting carrier, as the case may be. If in such a case the goods are to be delivered by the initial carrier to a connecting carrier for further transportation, the former is considered as a forwarding agent rather than a carrier as to such further transportation, and is not liable for the default of subsequent carriers. Its whole duty is not always performed, however, by merely tendering the goods to the connecting carrier. If the latter refuses to receive them, it is generally the duty of the initial carrier to notify the consignor or the consignee without unreasonable delay, and to store or otherwise take care of the goods for a reasonable time while awaiting instructions. So, where instructions are given it with the goods to be transmitted to succeeding carriers, it is the duty of such initial carrier to duly transmit them to the connecting carrier."

Citing numerous authorities.

"SEC. 1440. It is, in general, the duty of the initial carrier to obey the instructions of the shipper as to the route, mode of carriage and the like, and it should also transmit the instructions of the shipper to the connecting carrier."

Citing North *v.* Merchants' Trans. Co., 146 Mass. 315;
Palmer *v.* Chicago, &c., R. Co., 56 Conn. 137; 13 At. R. 818;
Little Miama R. R. Co. *v.* Washburn, 22 Ohio St. 324.

The leading case in the United States Supreme Court reports, at least that case seemingly considered by the text-writers to be the leading case, is that of Railroad Company *v.* Manufacturing Company, 16 Wall. 318. That case establishes the rule that a common carrier is only liable to the extent of his own route, and for his safe storage and delivery to the next carrier. The court, at pages 324 and 325, among other things, says:

"Public policy, however, requires that the rule should be enforced, and will not allow the carrier to escape responsibility of storing the goods at the end of his route without delivery or at attempt to deliver to the connecting carrier."

111 Further, at page 326:

"It is true the company were obliged to carry for all persons, without favor, in the regular course of business."

Further, at pages 328 and 329:

"The carrier is in the exercise of a sort of public office, from which he should not be permitted to exonerate himself without the assent of the parties concerned. He is bound to receive and carry all the goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal."

The case of Myrick *v.* Michigan Central R. R. Co., 107 U. S. 106, is an instructive case on the common-law duties of common carriers, and in the course of the court's opinion by Justice Field among other things it is said:

"A railroad company is a carrier of goods for the public, and as such is bound to carry safely whatever goods are intrusted to it for

transportation, within the course of its business, to the end of its route, and there deposit them in a suitable place for their owners or consignees. If the road of the company connects with other roads, and goods are received for transportation beyond the termination of its own line, there is superadded to its duty as a common carrier that of a forwarder by the connecting line; that is, to deliver safely the goods to such line—the next carrier on the route beyond."

See also Penn. R. R. Co. *v.* Jones, 155 U. S. 333;
Daner *v.* N. Y. Central, &c., R. R. Co., 50 Howard Pr. 428;
Little Miama R. R. Co. *v.* Washburn, 22 Ohio St. 330;
Parker *v.* V. S. C. B. & Q. R. R. Co. and Penn. Co., 56 Conn. 137;
Bosworth *v.* Chicago R'y Co., 37 Federal, 72;
R. R. Co. *v.* Manufacturing Co., 16 Wallace, 318;
R. R. Co. *v.* Jones, 155 U. S., 333;
Vincent *v.* C. & A. R. R. Co., 49 Ill. 41–44;
Coe *v.* L. & N. R. R. Co., 3d Federal, 778.

Where live stock and perishable freight which will suffer damage by delays and by reason of handling, are to be transported
112 over more than one road, the initial carrier, *by reason of the long practice and recognized course of business in handling such freight and the absolute necessity therefor*, must deliver same without breaking bulk to the connecting carrier, that is, without unloading, and it must permit its cars to be used to the destination of said shipment. This practice and course of business is so absolutely necessary and well established that the courts take judicial notice thereof.

This proposition seems to have been conceded by this honorable court in the opinion rendered herein, and attention is now called to same merely for the purpose of showing that in the case at bar, the Louisville & Nashville railroad, in delivering to the Southern road as requested, not only would not be required to load or unload said live stock, but in law would not be permitted to do so, but would necessarily turn over the cars in which said live stock was loaded to the Southern railway, to be delivered by said road to the Central stock yards, and that therefore the facts in the case at bar places it outside of the rule in the Butchers' & Drovers' and Keith cases.

The authorities sustaining this proposition are as follows:

Peori & P. U. R'y Co. *v.* Railroad, 109 Ill. 135;
Louisville & Nashville R. R. Co. *v.* Williams, 95 Ky. 199;
Jacobson *v.* Wisconsin, Minnesota & Pacific R. R. Co., 71 Minn. 532; 40 L. R. A. 392; 179 U. S. 287; 70 Amer. State Reports, 364;
Burlington C. R. & N. R. R. Co. *v.* Deg, 82 Iowa, 312; 12 L. R. A. 436;
Michigan C. R. Co. *v.* Smithson, 45 Mich. 212;
Inmann *v.* St. Louis S. W. R. R. Co., 37 S. W. Report. 37.

In the opinion rendered herein it is held, that the Central Stock Yards Company is primarily the stock yards of the Southern Railway Company, and is a Louisville stock yard to be used in building

up the live-stock business to and from Louisville, and it is
113 said by the court, that these facts narrow the case to the consideration of the rights of complainant to require the Louisville & Nashville Railroad Company to make transfers to the Central Stock Yards Company over the connection of the Southern railway of live stock whose destination is Louisville.

At common law, while a common carrier cannot be compelled to carry beyond its lines or to make traffic arrangements with other roads for through billing, thus extending its lines by assuming responsibility for safe delivery, yet at common law such carrier is in the exercise of a public duty or office, and as such is bound to carry safely whatever goods are entrusted to it for transportation within the course of its business to the end of its route, and if the destination of said shipment is off of or beyond the termination of its own line, there is superadded to its duty that of a forwarder by the connecting line, and when instructions are given to it with the goods to be transmitted to succeeding carriers, it is the duty of said initial carrier to duly transmit these instructions, and its responsibility is not discharged as a common carrier until it has so delivered said goods, *together with the instructions*. And as it is shown that the Louisville & Nashville Railroad Company is a common carrier engaged in the transportation of live stock, and that it has a physical connection between its tracks and that of the Southern railway in Kentucky, at Louisville, Kentucky, and as by reason of the long practice and course of business rendered absolutely necessary in the shipment of live stock delivery thereof in bulk is required, that is, without unloading, said road in assuming the duties of a common carrier of live stock, undertakes and agrees with the public, *and is required by law* to accept such shipments, to be handled *according to the usual custom and necessity of the case*, and where the destination is on the lines of a connecting carrier, to deliver it to said connecting carrier in bulk, that is, in its cars, as that is the usual and in fact the only way live stock is or can be handled.

If understood correctly, this honorable court holds that said
Central stock yards is a Louisville market, and *that the desti-*
114 *nation of the shipments made to it is the city of Louisville, Kentucky*, and as the Louisville & Nashville Railroad Company cannot be compelled to have more than one depot of delivery in said city, it has the right to deliver said shipments made to the Central stock yards at its depot of delivery, which is the Bourbon stock yards, in said city.

It is respectfully submitted that this conclusion is incorrect, because the right of delivery of live stock by a common carrier at its depot established for that purpose, is dependent *solely* upon the fact as to whether or not said initial carrier is required to *load* or *unload* said stock; and as said requirement and necessity for said depot only exists under that state of case, and as in the shipments to the Central stock yards the Louisville & Nashville Railroad Company is not only *not required to unload*, but under law cannot refuse to permit same to be shipped to the Central stock yards in bulk, in its

cars, delivery at its said live-stock depot is not only unnecessary but is in violation of plaintiff's rights.

For the purpose of argument, let us suppose that these shipments to the Central stock yards consisted of dead freight. Will it be contended that the Louisville & Nashville Railroad Company would not, under law, be compelled to receive said shipments and on their bill of lading show the destination, *Central stock yards?* The live-stock shipments only differ from the dead-freight shipments as to the responsibility and trouble of loading and unloading, and if it be conceded, as the authorities seem to hold without conflict, that these live-stock shipments are to be made without breaking bulk, that is, without change of cars, then this does away with said distinction between *dead* and *live* freight, because by reason of the nature of the live-stock shipments the right *to unload*, on the part of the initial carrier, is denied.

It certainly cannot be contended that it is any part of the duty of a common carrier to furnish to shippers of live stock any market therefor. The Louisville & Nashville Railroad Company has
115 undertaken to provide for itself in Louisville, Kentucky, not only a live-stock depot or loading and unloading chutes and pens, but a live-stock market for its patrons, and insists that shippers shall only patronize the market so provided by it. Can this be lawful and enforceable as against the wishes of the owners of live stock? We think not.

It is submitted that a common carrier cannot take into consideration in entering into its contract of carriage, *for what purpose the shipment is made*, as, by reason of its privileges granted, it becomes a quasi-public institution and must serve all alike who tender it shipments, affording all equal facilities for receiving, forwarding and delivering said shipments to and from its several lines and those connecting therewith, giving no unreasonable preference or advantage to any person, or corporation, or locality. This is no new doctrine, but is a fundamental principle of the common law, clearly and forcibly stated by Judge Baxter in the case of McCoy *v.* C., I. & St. L. R. Co., 13 Federal Reporter, page 3. In that case it is said:

"The facts suggest a very important inquiry, how far railroads, called into being to subserve the public, can be lawfully manipulated by those who control them to advance, incidentally, their own private interests, or depress the business of particular individuals or localities for the benefit of other persons or communities. As common carriers, they are by law bound to receive, transport, and deliver freights offered for that purpose, in accordance with the usual course of business. The delivery, when practical, must be to the consignee."

The third section of the interstate-commerce act is equally as broad upon this proposition as the common-law doctrine just stated.

Admitting that the Central Stock Yards Company is primarily the stock yards of the Southern Railway Company and established as a general stock depot for receiving and delivery of stock at Louisville, Kentucky, as is held by this honorable court, in view of

the plain letter of the law it is difficult to see how this state
116 of affairs can have any controlling or even persuasive influence in determining the legal propositions submitted.

It seems to be settled beyond controversy, that a common carrier must serve the public equally. It is certainly as well settled that where it holds itself out as a common carrier of live stock, it must accept such shipments tendered and make carriage thereof in the usual and customary way, that is, without breaking bulk, and in accepting such shipments, where the destination is not upon the lines of the initial carrier, but in order to reach the consignee it must be delivered by the initial carrier to a connecting carrier for delivery, the duty of the initial carrier is not discharged until he has made such delivery together with the instructions as to the destination, for if it were otherwise then certainly the general business of the country would greatly suffer, as in most shipments the consignor is unable to follow in person said shipment.

It is thought to be well settled that the right of the initial carrier to deliver at its established stock depot is dependent solely upon the question as to whether or not, under the contract of shipment, *a loading* or *unloading* of said stock is made necessary on the lines of said initial carrier at said point. It is certainly the only condition upon which *this right of delivery at said depot arises*, that is, the responsibility and trouble of loading and unloading. How then can the fact that this live stock is delivered for the *Louisville market* make any change in the principle of the law under the state of facts existing in this case, which requires that the initial carrier shall deliver to the connecting carrier for delivery? There seems but one answer to this question, viewing it from the standpoint of defendant as its defense is presented both by its answer and affidavits, that is, that it will not deliver to the Central stock yards because in doing so it is thereby strengthening and building up an adversary of its own live-stock depot.

If the delivery of the shipment is to be made by a connecting
117 carrier on a market other than that of Louisville, it is not thought that it would be contended that the Louisville & Nashville railroad *could not* be compelled to receive and make said delivery to the connecting carrier. What principle then of right or equity is there that changes the rule because the delivery is to be made to a connecting line for delivery to the consignee for the same market whereon the common carrier has employed *a like enterprise?*

It is evident that this honorable court concluded that as the Central stock yards was a *Louisville market*, that the destination of shipments thereto was reached upon the arrival of the Louisville & Nashville trains at Louisville, and that, therefore, a delivery was to be made by the Louisville & Nashville, thus giving it the right to unload at its stock yards and make such delivery therefrom. In view of the requirements of both the common law and the interstate-commerce act it is respectfully submitted that this conclusion is erroneous, because the physical connection not only exists between the tracks of the two roads, but is in constant use for all shipments

except those of live stock destined to the Central stock yards, and the only reason for this exception is shown both by the answer of defendant and affidavits filed therewith; that is, that it and the Bourbon stock yards have expended considerable money in erecting and equipping said yards, and that it is entitled to deliver all stock hauled over its road at said yards, and to require it to deliver to the Southern would also put it to considerable inconvenience and require an additional engine and crew.

Stated briefly, the substance of defendant's defense herein is that to require it to deliver to the Southern would work an injury to its stock yards and prevent it from compelling shippers to patronize same regardless of their wishes in the matter, and would also compel it to furnish the public such service as is due from it by reason of the privileges granted.

If this is the law, then it necessarily results that whenever any railroad entering a given city establishes its stock yards, if it happens that its lines pass through the stock-growing section
118 of the country, as in the case of the Louisville & Nashville railroad, then said road can make a monopoly of the stock-yards business, although it may have a physical connection between its tracks and those of other roads in said city, upon which other roads there are also established stock yards; because, as shown in this case, and as is also a fact so well known that the court may take judicial notice of it, that to require the stock to be delivered at the Bourbon stock yards and there unloaded, and then reloaded and shipped to the Central stock yards, or driven on foot through the populous part of the city, a distance of some six miles, would cause such a loss to said stock in shrinkage and waste, damage and expense, as to make it entirely unprofitable to the shippers. This certainly ought not to be the law regarding the question, simply from a point of common honesty and fair dealing. The wishes of a shipper, where the facilities exist for carriage, certainly ought to be consulted. He may have many good and valid reasons for desiring to patronize one yard instead of another, and the common carrier is granted its existence and privileges upon the idea that it will, according to its powers, furnish equal facilities for the receiving and forwarding and delivery of the property of said shippers to and from its several lines and those connecting therewith, and it has no right whatever to inquire before receiving said shipments as to the uses to be made thereof when the same reaches its destination. To grant it such power would place it above the interests of the people, that it is created for and required to serve, and it certainly will not be contended that such reasonable and just requirements as are herein asked, although it may put said road to some inconvenience and require it to furnish additional rolling stock and service to handle the increase of business, will constitute any legal excuse.

In the opinion rendered by this honorable court herein it is said:

"It is averred in the bill that the Southern Railway Com-
119 pany has notified the respondent that it would be and now is willing to be responsible from points of physical connection

with the Louisville & Nashville railroad for the delivery of such live stock and the collection of all charges on the same, and would promptly return to all points of connection all empty cars, and would account for all freight charges collected in the usual way. This may be true, and would possibly be a reasonable arrangement. But have the courts the right, in the absence of statute, to dictate to carriers the contract they shall make in the interchange of traffic, and to require such to be carried out as the courts deem reasonable? The billing and transfer of freight from outside points over the two railroads is a matter of arrangement between them. The proportion of the joint tariff each shall receive, the handling of cars, the liability of one to the other, and other matters are to be determined by the contract between the parties. Each controls it- own railroad and may determine for itself upon what terms it will unite in a joint tariff. No arrangement exists with the Southern railroad for the transportation and delivery of cars of live stock to the Central stock yards, if that can be assumed to be a station on the line of the Southern railroad, nor do we think a court of equity has the power to make one and supervise its execution, nor has this right been conferred upon the courts by the interstate-commerce act. This doctrine is so thoroughly established as to require no more than the citation of the authorities in support of it:

A. T. & S. R. R. *v.* D. N. O. R. R., 110 U. S. 667;
Express cases, 117 U. S. 1;
Pullman Palace Car Co. *v.* Missouri Pac. R'y Co., 115 U. S. 587;
N. Pac. R. R. *v.* Dustin, 142 U. S. 492;
Kentucky & I. Bridge Co. *v.* Louisville & N. R. R., 37 Fed. 567;
L. & N. R. R. Co. *v.* St. L. M. R. R., 41 Fed. 599;
Oregon Short Line Co. *v.* N. P. R. R., 51 Fed. 475;
St. L. Drayage Co. *v.* L. & N. R. R., 65 Fed. 38;
Allen & Lewis *v.* Oregon R. and Nav. Co., 98 Fed. 16."

It is respectfully submitted that in this conclusion the court is incorrect, because, while it is alleged in said bill that the Southern Railway Company had notified the Louisville & Nashville Railroad Company that it would receive at such points of physical
120 connection and be responsible for return of freight and immediate return of empties, it does not necessarily follow that from the making of this offer by the Southern railway that in order to grant the relief sought herein by plaintiff that the court should determine that said Louisville & Nashville Railroad Company should accept such proposition, although the evidence in the case, as shown, clearly establishes that such arrangements had been entered into between said roads relating to all other shipments except such as were destined to the Central stock yards.

In the record of this case (between pages 74 and 75) is attached a Louisville & Nashville Railroad Company contract for the transportation of live stock over its lines, same being such a contract as the court herein is asked to compel the Louisville & Nashville rail-

road to enter into as to shipments of live stock tendered it destined to the Central stock yards, and by the very terms of said contract, section 1, it is provided that the shipper releases the common carrier from all liability, etc., if the shipment is destined to a point beyond said carrier's lines when the delivery is made to the connecting carrier.

It thus clearly appears that no interchange of joint traffic between these two roads is asked of the court, or any through billing, nor is it sought to compel the Louisville & Nashville Railroad Company to carry except on its own lines. This court is simply asked to compel the Louisville & Nashville Railroad Company, as it is its duty to do, to receive shipments from owners and consignors of live stock, and to show upon said bill of lading, as in its live-stock contract filed, the destination of said shipment, and to deliver same to the connecting carrier as both at common law and statute it was and is its duty to do, and if such requirements are made by the court the initial carrier's responsibility would cease upon the delivery to the connecting carrier.

The authorities cited by this honorable court may sustain the said statement made in the opinion, but it is respectfully sub-
121 mitted that in the case at issue this state of facts do not exist, as this bill does not seek to compel the defendants to enter into any joint traffic arrangement, or through billing. By the terms of the live-stock contract of the Louisville & Nashville railroad filed, which is the usual and customary contract entered into by all roads, it is shown that the initial carrier's responsibility ceases whenever it delivers to the connecting carrier, and the law requires *him* to also deliver to such connecting carrier on the delivery of such freight the instructions of the shipper as to destination, and the contract filed shows a blank left to indicate the destination.

The bill in this case, briefly stated, simply asks that the defendant be compelled to receive, ship, transport, transfer, switch, and deliver to the connecting carrier, and while it is stated in the body of said bill that the Southern Railway Company had agreed to be responsible for the collection of freights, etc., it is not asked that the mandatory injunction prayed for, require defendant to ship under said arrangement with the Southern as to the said freight, but simply that it be required to receive and deliver, which necessarily means in the usual way and under the usual terms and conditions, but even had the bill asked that defendant be required to enter into this arrangement with the Southern as to freight, still, although it might not be entitled to this requirement, if it shows upon its face that the defendant is violating a plain, legal duty, regardless of this allegation as to freights, the plaintiff is entitled to redress to the extent that it is necessary to be given to remedy the wrong and injury suffered. This allegation as to freight certainly cannot deprive plaintiff of its legal rights, if they are shown to exist, although said freight arrangement may not be one of the elements of said right. It will not be deprived of what it is entitled to because it asks more.

The case presented as to the proposition of defendant's rights as to freights shows the following state of facts and laws:

By the affidavit of T. C. Powell (Record, pages 32 to 36), the physical connection between these two roads is shown to exist,
122 and that the movement required for delivery of cars from one road to the other is simply a *switching movement*, and made within the switching limits of the city of Louisville, for which a fixed price, $2.00, is established, and cannot be changed or varied by the initial carrier, and that therefore this charge cannot and does not enter or become a part of the freight charge for the haul by the Louisville & Nashville railroad from the point where said freight is received to the city of Louisville, and that therefore it is not and cannot be a subject of through billing or traffic contract entered into by the two roads.

The court's attention is respectfully called to the case of Chicago N. & St. P. R'y Co. *v.* Becker and others, 32 Federal Reporter, page 849, as fully sustaining this last contention as to the switching movement.

Also to The State of Iowa *v.* Chicago N. & St. P. R'y Co., 33 Federal Reporter, page 391.

It is thought that these cases are conclusive of this question.

As stated, the court is asked to require the defendant to receive and deliver to the connecting carrier. If the court grants such relief, it would certainly do so requiring defendant to receive and deliver under the usual custom, terms, and conditions, and in conformity to the law governing the question of freights, and nothing more is asked or intended to be asked by said bill. If this be a correct statement of the law, as it is thought to be, then the question of the collection of freights from the point of reception to the point of delivery by the initial carrier is a matter dependent upon the wishes and demands of the said initial carrier, as in law he has the right to demand prepayment of such freights before any transportation of or delivery to the connecting carrier.

In the 2d edition of the American and English Encyclopedia of Law, vol. 5, page 166, it is said:

"Upon a demand therefor by the carrier, a shipper is bound to prepay all freight charges on goods tendered for transportation."

and a number of authorities are cited thereunder.

123 In Galena & Chicago U. R. R. Company *v.* Rae, 68th American Decisions, page 574 (quoting from the syllabus) it is said:

"A railroad company may demand prepayment of freight charges, but in omitting such demand the company becomes bound to transport the freight according to its custom, and slight evidence of willingness to pay will be sufficient to support an action for damages caused by refusal to receive such freight."

Again, it is said in the American & English Encyclopedia of Law, 1st edition, vol. 25, page 904:

"The actual production of money is not required where the party is ready and willing to pay but is prevented by the creditor declar-

ing that he will not receive it, or by his making any declaration equivalent to a refusal to accept it if tendered."

See cases cited in note thereunder as follows:

Dorsey *v.* Cock, 4 Bibb, 45;
Tibbs *v.* Timberlake, 4 Littell, 16;
Dorsey *v.* Barbee, Littell's Select Cases, 205;
Stapp *v.* Phelps, 7th Dana, 301;
Sanford *v.* Farmers' Bank, 1st Bush, 340;
Mundy *v.* Kaan's Adm'r, 5th Ky. Law Reporter, 697;
Jones *v.* Strode, 19th Ky. Law Reporter, 118.

Neither the bill in this case nor the answer shows that any prepayment of freight was demanded by the defendant of the shippers, but, on the contrary, said bill shows that defendant not only refused to receive such shipments destined to the Central stock yards, or to indicate said destination upon its contract of shipment, but that it issued its circular letter to all of its agents along its routes directing them not to receive such shipments, thereby making a tender of freight charges unnecessary, and it is further shown that even where such shipments were received, that when same arrived at the city of Louisville, instead of being delivered to the connecting carrier,
124 they were unloaded at said Bourbon stock yards, against the known request and wishes of the shippers.

In the argument made herein before this honorable court it was contended for defendant that there were no facilities at the place of physical connection between the two roads where the stock could be inspected or the freight collected; but this argument was entirely outside of the record in this case, as neither in the answer or affidavits filed is this defense presented as to the existing condition at said place of physical connection, nor are the facilities existing for inspection and collection of freights shown in any way whatever; but the record does show that at said place live stock destined for non-competitive points, and all other freight, is daily exchanged between the two said roads.

The answer in this case does not present any defense based on the idea of freights, but rests the entire case upon the two questions:

1. That having at great expense established its own stock yards it has a right in law to deliver all freights coming over its lines at said stock yards.

2. That to require it to deliver to the Southern would disarrange its manner of transacting business and put it to considerable trouble and expense in having to furnish an additional engine and crew.

This certainly presents a fair statement of the defenses tendered, and it is submitted that it is shown by the bill that what may be termed the *technical* objections to the enforcement of the right to have this stock received and delivered have been fully met, bringing the case down upon its merits to the two propositions of defense stated.

If it be true that plaintiff is entitled, as a matter of law, to have these shipments delivered to the connecting carrier, then the violation of that right is so far-reaching and so detrimental to the

interests of the Central stock yards, with its investment of some two hundred thousand dollars, and of such great importance to
125 the public generally, that no court ought to permit technical questions to stand in the way of the enforcement of said right, unless compelled to do so by some imperative requirement of the law.

As to the second defense relied on by defendant, that is, that to require it to deliver to the Southern railway would disarrange its manner of transacting business and put it to trouble and expense in having to furnish an additional engine and crew, it is not thought that it will be seriously insisted that this defense is valid or constitutes any legal excuse whatever for the non-performance of a plain duty. The defendant is engaged in a public service and has placed its property in such a position that the public has an interest in its use It has assumed said relation and agreed voluntarily to accept all the conditions of said service which attach. It does not perform said service with a single idea of profit, and it must comply with all requirements, although they may result in inconvenience, expense, etc.

Wisconsin M. & P. R. Co. *v.* Jacobson, 179 U. S. 287.
Worcester *v.* Norwich & W. R. Co., 109 Mass. 112.
People *ex rel.* Green *v.* Duchess & C. R. Co., 58 N. Y. 152.
People *ex rel.* Kimble *v.* Boston & A. R. Co., 70 N. Y. 569.
People *ex rel. v.* N. Y., L. E. & A. R. Co., 104 N. Y. 58.
58th American Reports, 484.
9th N. E. 856.
Cotting *v.* Goddard, Supreme Court Advance Sheets, Dec. 16, 1901, page 32.

Interstate-commerce Act.

The propositions herein have been considered at some length under the common law, as this honorable court seems to have based its opinion largely on such principles, regardless of the interstate-commerce act, or, in other words, upon incidental questions before the merits of the case are reached; those questions being:

1. That having established a stock depot on its own lines at Louisville, Kentucky, and as the Central stock yards is a
126 *Louisville market*, the shipments thereto over the lines of the Louisville & Nashville Railroad Company, can, under law, be delivered by said company at its said stock yards, regardless of the directions or wishes of the shipper.

2. That to grant the relief asked would be to require the said Louisville & Nashville railroad to enter into joint traffic arrangements or through billing with the Southern railway.

It is thought that both these conclusions are incorrect, by reason of the state of facts existing and the law herein cited.

Considering the case under the interstate-commerce act there seems to be but two questions pertinent.

1. Whether or not, conceding that the Central stock yards is a Louisville market, the Louisville & Nashville railroad can, under

the interstate-commerce act, interpreted in the light of the common law governing carriers, be required to receive and show upon its said contracts of shipment the destination of interstate shipments of live stock to said Central stock yards, and transport same over its lines.

2. Whether or not, under the interstate-commerce act, or the 213th section of the constitution of Kentucky, or both, the Louisville & Nashville Railroad Company can be required to deliver to the Southern Railway Company, at Louisville, Kentucky, for delivery at the Central stock yards, such interstate shipments coming over its lines.

Section 3 of the act to regulate commerce, vol. 1, second edition, U. S. Supplement, page 529, reads as follows:

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for
127 the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Section 213 of the constitution of Kentucky reads as follows:

"SEC. 213. *Freight and cars to be handled and transported without discrimination.*—All railroad, transfer, belt lines, and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines, or bridges, or doing a railway business in this State, shall receive, transfer, deliver, and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car-loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge, or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

As to the first question presented, that is, whether or not under the interstate-commerce act supplementing the duties of carriers under the common law, the defendant can be required to receive

and transport, together with the instructions of the shipper, these interstate shipments.

Under the common law a carrier is required to receive and transport for all alike, and where the delivery of shipments is to be made beyond its lines, to receive and forward the instructions of the shipper and to deliver same, together with the shipment, to the connecting line. This is thought to have been conclusively shown to be the law.

128 The third section of the interstate-commerce act certainly does not restrict these duties and liabilities of the carrier under the common law. By said act it is made unlawful for said carrier to give any undue or unreasonable preference or advantage to any particular person or locality or description of traffic in any respect whatever, or to subject any person or locality or description of traffic to any unreasonable prejudice or disadvantage, and it requires said carrier, according to its respective powers, to afford all reasonable, proper, and equal facilities for the interchange of traffic between its lines, and for the receiving, forwarding, and delivery of passengers and property to and from its several lines and those connecting therewith.

The mere statement of these propositions seems to render unnecessary any argument as to their correctness. The principles of the common law as stated are well established. The third section of the interstate-commerce act certainly means something, and was and is intended to apply to some state of case, and it is difficult, if not impossible, to imagine a case where this section could apply if not in the case stated. Besides, the requirements asked are so reasonable and absolutely just, and the reason for the failure to comply therewith so plainly dictated by the selfish purpose on the part of defendant to foster and build up a stock market on its line exclusive of other like enterprises, as to merit condemnation on principles of equity, regardless of statutory aid.

The case presented is clearly within the letter of the third clause of the interstate-commerce act, and if that section does not apply then the said section is necessarily meaningless. With a case fairly presenting every condition condemned by the said third section, complainant and the public generally are entitled to an authoritative interpretation of said section.

Here we have a description of traffic—live stock—a class of persons, viz., live-stock raisers, dealers, and handlers, and a particular locality, Central stock yards, subjected to an unreasonable prejudice and disadvantage.

129 There can be no question of the existing facilities for the Louisville & Nashville Railroad Company to interchange traffic between its lines and the lines of the Southern railway when demanded by the public and have delivery of traffic made accordingly as ordered by shippers.

The question, therefore, is, can these plain and unambiguous provisions of the said act be disregarded by the defendant?

In considering the second proposition, assistance may be had in arriving at a correct determination by making a comparison of the

third section of the interstate-commerce act, and the said 213th section of the constitution of Kentucky.

It is submitted that section 3 of the interstate-commerce act makes certain requirements of the carrier in general terms, that is, to require it to furnish equal facilities, *without going into detail as to said facilities*, while section 213 of the constitution requires no more than is perhaps required by the interstate-commerce section (that is, as to any proposition involved in this case), but *does enter into detail*, setting forth specifically the acts required in order to furnish said facilities for the interchange of traffic, and forwarding and delivering same between the lines of defendant and those connecting therewith.

That it was intended by the 213th section of the constitution and legislation had thereon, to require a common carrier to receive, deliver, transport, and transfer freight to any point that is in physical connection with the tracks of the other company there seems to be no doubt, in view of the language used in said section. That the highest court of the State of Kentucky so considered is evident from the language used in the case of The Louisville & Nashville Railroad Company *v.* Williams, 95 Ky. 199 (court of appeals). Therein it is said:

"It seems to us the constitutional provisions by which one railroad company is compelled (thereby admitting the contention of the L. & N. therein) to take cars of another over its line can have no bearing on this case. If the cars were in an unsafe condition, or were so defective in their construction as to render it unsafe
130 to those who are required to handle them, it is the duty of the company to refuse to receive the car if such defect exists, and no other construction, it seems to us, can well be given this clause of the constitution.

In the opinion rendered by this honorable court it is said:

"It is thoroughly settled that the power of Congress to regulate commerce is plenary, and no State has the right to regulate purely interstate commerce. On the other hand, the State has the right to make provisions as to matters within its own boundaries intended as aids to commerce, not thereby regulating interstate traffic. Without undertaking to reconcile or consider the numerous decisions, we may refer to The County of Mobile *v.* Kimball, 102 U. S. 691."

Then, after making the quotation from said case, the court holds that the relief sought herein pertains to the transportation and delivery of interstate freight. That it is not the means of making a physical connection with other railroads that is aimed at, but that it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way, and that if the constitution of Kentucky could be given such construction it would follow that it could regulate interstate commerce.

It is submitted that under the law as it now exists, where Congress has not acted the States may, and that even in cases where Congress has taken action as to the given proposition, that still the State may exercise its police power and legislate, provided such legis-

lation is not in conflict with the provisions of congressional enactments.

There are numerous authorities to the effect that the police power of a State cannot be effectually granted or contracted away, or in anywise relinquished, and following along said line of authorities, in Louisville & Nashville Railroad Company *v.* Commonwealth of Kentucky, 161 U. S., page 701 (859), it is said:

"But little need be said in answer to the final contention of the plaintiff in error that the assumption of a right to forbid the
131 consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less with commerce between the States, in the fact that they impose a burden upon the instruments of such commerce, *and add something to the cost of transportation by the expense incurred in conforming to such regulations.* These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less according to the policy of the State within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the *instruments* of such commerce."

It was said in Sherlock *v.* Alling, 93 U. S. 99, 103, 104 (23–819–821), and quoted with approbation in Plumley *v.* Massachusetts, 155 U. S. 462 (39 : 224), that

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it (702) within the meaning of the Constitution * * * *and it may be said, generally, that the legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens,* and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon *citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.*"

"It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to *the instruments of such commerce,* so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under State authority, and it cannot be supposed that they intended to abandon their power

over them as soon as they were finished. The power to con-
132 struct them involves necessarily the power to impose such regulations upon their operations as a sound regard for the *interests of the public may seem to render desirable.* In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce and forbid interference therewith; *while to the State remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.*" (Our italics.)

The police power of a State, in its broadest acceptation, means the general power to preserve and promote public welfare, even at the expense of private rights, in order to protect the health, peace, comfort, morals, convenience, and prosperity of the people of the State. This is shown by the Lake Shore, &c., R. R. Co. *v.* Ohio, 173 U. S. 285, and a number of other authorities.

In considering this question, it is very necessary to bear in mind that the Louisville & Nashville Railroad Company is a Kentucky corporation, created by the legislature of Kentucky, and subject to control by same. The 213th section of the constitution of the State of Kentucky, as far as the questions involved in this case are concerned, is not in conflict with the provisions of the 3d section of the interstate-commerce act, but is plainly in aid thereof. Said section of the constitution is not directed against interstate-commerce shipments, but, as said in Wisconsin M. & P. R. Co. *v.* Jacobson, would plainly afford facilities to interstate commerce, and would in no wise regulate such commerce. Besides, it is evident from the bill and affidavits filed in this case that there was a necessity for such requirement of delivery as to intrastate commerce, and conceding that such necessity exists for intrastate commerce in order to subserve the convenience and prosperity of the citizens of this State, as said in Sherlock *v.* Alling, 93 U. S. 99, 103–104 (23, 819–821), and reported with approbation in the Jacobson case, legislation in a great variety of ways may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the constitution, and it may be said generally that the legis-
133 lation of a State not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of an obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.

It is conceded that where Congress has prescribed a regulation as to any given proposition respecting interstate commerce that said enactment is of a plenary nature, and that any State legislation in conflict therewith is void; but if such legislation be simply in aid of the congressional enactment, then it may be enforced, provided it is within the limits of the police power of said State; and it is thought to be the law that as to such police power the State cannot effectually grant it away; but, however this may be, it is reasonably certain that if said enactment is not in conflict with the congres-

sional enactment, and is within the limit of the police power, that it is enforceable.

In the case at bar, while this honorable court seems to concede these propositions as stated, it holds that the State requirement of a delivery to a connecting line is a regulation of interstate commerce, as it pertains to the transportation and delivery of interstate freight, and not to the means of making a physical connection with other railroads. While it is true that it does not pertain, as in the Jacobson case, to the means of making a physical connection with other roads, as a physical connection already exists, it is a regulation as to the means of delivery of all freight. The necessity therefor, as far as intrastate freight is concerned, is shown to exist, and it certainly has the right to regulate the delivery of such freight. If this incidentally or indirectly also regulates the delivery of interstate freight the destination of which is the city of Louisville, in the State of Kentucky, then it is not thought that this is such a regulation or requirement as to constitute an unreasonable interference with interstate commerce; and as said in Louisville & Nashville Railroad Co. *v.* The Commonwealth of Ken-
134 tucky, 161 U. S., page 699 (859): "Nearly all of the railways in the country have been constructed under State authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operations as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith, while to the State remains the power *to create and to regulate the instruments of such commerce* so far as necessary to the conservation of the public interests." Thus it plainly appears that the power of the State, although Congress has acted, is not exhausted by simply requiring the track to be laid and the connections formed, but it may, in addition thereto, regulate the instruments of such commerce. It would certainly be a useless requirement to make these carriers furnish reasonable facilities for the interchange of traffic between their lines and those of other roads and still not have the power to so regulate such commerce as to require its interchange by the use of such facilities. The purpose of the connection is but half served in laying the tracks. The main object thereof is the interchange of traffic. It is submitted that the court is in error in determining that a requirement to make delivery to a connecting carrier is such a regulation, considering the case presented, as is not enforceable, because, first, the plain construction of the third section of the interstate-commerce act requires such delivery. The constitutional provision is simply in aid thereof, and is within the limits of the reserve police powers of the State. It is a reasonable regulation, and does not interfere in any way whatever, by reason of delay of or otherwise, with the delivery of such shipments. While it may result in the control of the manner of delivery of interstate shipments, it does so only indirectly by the exercise of an authority as to the regulation

of the instruments of delivery, and not by direct enactment intended to control interstate freight.

In the case of Richmond & Alleghany R. R. Co. *v.* R. A. Patterson Tobacco Co., 169 U. S. 309 (759), a contract of shipment
135 was issued for the shipment of interstate freight, its destination being beyond the lines of the initial carrier, and said contract of shipment by express terms released said initial carrier of all responsibility upon delivery to the connecting carrier. Said shipment was made from the State of Virginia to a point in the State of Louisiana. There was at the time a provision in the code of the State of Virginia providing that in the case of such shipments that the initial carrier should not be released from responsibility for loss, etc., except by contract in writing signed by the shipper. The case was submitted to the trial court on an agreed statement admitting the receipt of the goods, the issue of the bill of lading, the fact that it was not signed by the shipper, and the loss of the tobacco beyond the lines of the defendant. Plaintiff rested on the statute above quoted, and the defendant on its claim that the statute was a regulation of interstate commerce, and therefore in conflict with the Constitution of the United States. In said case, which was carried from the supreme court of the State of Virginia to the United States Supreme Court, the Supreme Court of the United States held the carrier liable upon the idea that said State enactment, although it affected interstate commerce, was not a regulation thereof, but a rule of evidence made necessary by the State enactment in order to release such liability.

In Chicago, Milwaukee & St. Paul R'y Co. *v.* Patrick L. Solan, 169 U. S., page 133 (688), it is held that a State statute prohibiting contracts to exempt a railroad company from liability as a common carrier is not in any just sense a regulation of commerce, or void as to interstate business.

In Missouri, Kansas & Texas R'y Co. *v.* Charles Haber, 169 U. S., page 613 (878), it is held that State regulations of the enjoyment of rights, or the performance of duties that do not directly interfere with the Federal Constitution, or acts of Congress, must be respected until Congress intervenes, although the subject may be within its control.

The court in considering this case should not lose sight of the fact that defendant is a Kentucky corporation, and that it acquired
136 all of its rights under its charter subject to the power of the State of Kentucky through constitutional provisions or legislative enactments to regulate and control the grant in the interest of the public.

If the court will read the debates of the constitutional convention of Kentucky (1890), wherein section 213 was adopted, it will be seen that the convention, in the interest of the general public, recognized the fact that it was no proper business of a common carrier to foster particular enterprises, but that, deriving its franchises from the legislature, and depending upon the will of the people for its very existence, it is bound to deal fairly with the public, to extend them

reasonable facilities for the transportation of their persons and property, and to put all of its patrons on an *absolute equality*.

We have always understood the law to be, and the highest court of the State, of defendant's creation, has held, that public policy forbids that common carriers shall be permitted to favor one shipper or consignee, or one class of shippers or consignees, in discharging the general duty to accept and carry goods without discrimination or prejudice between classes. See L. & N. R. R. Co. *v.* Pittsburgh & Kanawha Coal Co., 23 Ky. Law Rep. 1318.

The Supreme Court of the United States, in Louisville & Nashville Railroad Company *v.* Kentucky, 183 U. S. 503, in speaking of the rights of the defendant, Louisville & Nashville Railroad Company, under its charter as against the demands of the constitution of Kentucky, of which section 213 is a part, said, at pages 517 and 518:

"As it has been said of the one, so it may be said of the other, that the charter is taken and held subject to the power of the State to regulate and control the grant in the interest of the public.

"In Pennsylvania Railroad *v.* Miller, 132 U. S. 75, it was held that neither the original charter of the railroad company nor subsequent acts conferring additional privileges constituted such a contract between the State and the company as exempted the latter from the operation of the subsequently adopted constitution of Pennsylvania; that a constitutional provision, as applied to
137 the company in respect to cases afterwards arising, did not impair the obligation of any contract between it and the State, and that the company took its charter subject to the general law of the State and to such changes as might be made in such general law, and subject to future general legislation, since there was no prior contract with it exempting it from such enactments.

"The same principle was announced in Louisville Water Co. *v.* Clark, 143 U. S. 1, and in Louisville & Nashville Railroad *v.* Kentucky, 161 U. S. 677."

Again, at page 518:

"It may be that the enforcement of the State regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally; but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial powers of the General Government to be unlawful must be direct, and not the merely incidental effect of enforcing the police powers of a State. New York, Lake Erie & Western Railroad *v.* Pennsylvania, 158 U. S. 431, 439; Henderson Bridge Co. *v.* Kentucky, 166 U. S. 150.

"A discussion of this subject will be found in the opinion of this court in Louisville & Nashville Railroad *v.* Kentucky, 161 U. S. 677, 701, where the same conclusion was reached."

It is thought that the case of Minneapolis & St. L. R. Co. *v.* Minnesota *ex rel.* R. R. & W. Com., decided January 2, 1902, by the Supreme Court of the United States and found in No. 17 Advance

Sheet, August 1, 1902, which involves the same act of the legislature that was under condideration in the Jacobson case, 179 U. S., has considerable bearing upon the questions herein raised. This case was brought by writ of error from the supreme court of Minnesota (see 80 Minn. 191, 83 N. W. 60), and in the opinion of said State court it is shown that joint traffic arrangements existed between the several roads. The court held, however, in that case, that independent of such previously existing joint arrangements, no reason existed why under the amendatory act the commis-
138 sion could not lawfully compel a joint arrangement in a case like the one at bar. The court is respectfully referred to this State court opinion, as it seems to have been well considered.

The United States Supreme Court, however, on this point held that it was not necessary to determine that question in the case, as all that it was required to hold was that where joint traffic between two or more roads had been agreed upon, such traffic is as much within the control of the legislature as if it related only to transportation over a single road. The intimation in said opinion, however, is clear that if it had been necessary to determine said question it would have approved the holding of the State court.

In the course of said opinion Justice Brown says:

"The constitutionality of the act of 1895 is attacked upon the ground that it authorizes the railway commission of the State to compel two or more railroad companies to enter into a joint tariff, and to make and adopt a joint rate for the transportation of property over the lines of such companies, as well as to make a division and to apportion the joint earnings among the several companies interested. It is insisted that it is beyond the constitutional power of the legislature to compel companies to enter into involuntary, unreasonable, and unprofitable contracts with other companies at the instance of third parties, or to fix terms and conditions upon which such contracts shall be performed. This argument, in its various applications, is one which has been addressed to and considered by this court in nearly every case in which the power of the State to regulate railway charges has been called in question, and the answer made to it in those cases is equally pertinent here. Indeed, it is impossible for the State to exercise this power of regulation without interfering to some extent with the power of a railway to contract either with its customers or connecting lines. The power is one which was said in Munn *v.* Illinois, 94 U. S. 113, 24 L. Ed. 77, to have been customarily exercised in England from time immemorial, and in this country from its first colonization, for the regulation of ferries, common carriers, hackmen, bakers, millers, wharfingers, and innkeepers; and the whole object of this class of legislation
139 is to curtail the power to contract by limiting the exactions of those engaged in these occupations, and providing that the rendition of such services shall not raise an implied promise to pay more than a certain fixed sum. This legislation may be justified by the fact that these various occupations are necessarily to a certain extent monopolistic in their nature, and that in dealing with customers the parties do not stand upon an equality, the latter being

practically compelled to submit to such terms as the former may choose to exact, unless the State shall, acting in the interest of the public, elect to interfere and prescribe a maximum of charges."

* * * "Granting that a State has no right to interfere with the internal economy of a railroad further than to secure the safety and comfort of passengers, as, for example, to fix the wages of employés or control its contracts for construction or the purchase of supplies, it has a clear right to pass upon the reasonableness of contracts in which the public is interested, whether such contracts be made directly with the patrons of the road, or for a joint action in the transportation of persons or property in which the public is indirectly concerned." * * *

"We are bound to recognize the fact that modern commerce is largely carried on over railways owned and operated by different companies; that Congress, in passing the interstate-commerce act, assumed the power to determine the reasonableness of joint tariffs as applied to connecting lines between the several States (Cincinnati, N. O. & T. P. R. Co. *v.* Interstate Commerce Commission, 162 U. S. 184, 40 L. Ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700), and that, if the power of the State commission were limited to the tariffs of a single road it would be wholly inefficacious in a large number if not in a majority of cases—in fact, that the whole purpose of the act might be defeated. The necessities of this case do not require us to determine whether connecting roads may be compelled to enter into contracts as between themselves and establish joint rates, but so far as applied to contracts already in existence we have no doubt of the power of the State to supervise and regulate them. Such a contract for a joint rate having been in existence when the order of the commission was made, we do not think it was affected by the subsequent withdrawal of the Minneapolis & St. Louis Company. It may also be said, in this connection, that in Wisconsin M. & P. R. Co. *v.* Jacobson, 179 U. S. 287, 45 L. Ed. 194, 21 Sup. Ct. Rep. 115, we
140 held that, under this very act, railways in Minnesota might be compelled to make track connections at the intersections of other roads for transferring cars from the lines or tracks of one company to those of another, as well as for facilities for the interchange of cars and traffic between their respective lines. The case did not involve the right of the commission to prescribe joint through rates for the transportation of freight between points on their respective lines, but if any inferences are to be derived from the opinion they are in favor of such right. See also Burlington, C. R. & N. R. Co. *v.* Dey, 82 Iowa, 312, 338, 12 L. R. A. 436, 3 Inters. Com. Rep. 584, 48 N. W. 98. All that we are required to hold in this case is that, where a joint tariff between two or more roads has been agreed upon, such tariff is as much within the control of the legislature as if it related only to transportation over a single line."

In this case, in speaking of joint traffic arrangements, it is said that "so far as applies to contracts already in existence, we have no doubt of the power of the State to supervise and regulate them."

As shown in the case at bar, no interference is sought whatever to

be had with the freight charges from the point said goods are received to the city of Louisville, and the charge for the switching movement does not and cannot enter into said freight charge, but is a joint contract arrangement of switching and of switching charges within the switching limits of the city of Louisville, in the State of Kentucky, which cannot be changed by the carrier.

As it is thought this case also determines what was intended by said court to be held in the Jacobson case, that is, not only that connection at intersections of roads for transferring cars from the lines or tracks of one company to those of another may be compelled, but that facilities for the interchange of cars and traffic between the two lines can be enforced. This seems to us to be, on this as well
141 as other points, at variance with the construction given this opinion by this honorable court.

The opinion of this court herein, as understood by us, gives no effect or meaning to the third section of the interstate-commerce act, and denies to the State of Kentucky, by constitutional requirements or legislative enactment, the power to regulate and control, in the interest of the public, a grant given by it to a common carrier.

We submit that a rehearing should be granted, and so pray.

CENTRAL STOCK YARDS COMPANY,
By J. C. DODD,
W. M. SMITH, *Counsel.*

I certify that I am one of the counsel for the plaintiff in error herein, Central Stock Yards Company, and that I believe the grounds alleged are well founded, are such as warrant a rehearing of this case or a modification of the opinion, and that this petition is not interposed for delay.

W. M. SMITH.

142 And afterwards to wit on October 7th, 1902, an order denying said petition for rehearing was entered which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
L. & N. R. R. Co.

The petition to rehear in this case is denied.

And afterwards to wit on October 13th 1902, an entry was made upon the journal of said court in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS CO.
v.
L. & N. R. R. Co.
Before Lurton, Day, & Severens, JJ.

Petition for appeal by the Central Stock Yards Co. is submitted.

And on the same day to wit on October 13th 1902 petition for appeal was filed clothed in the words and figures as follows:

143 United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee.

Petition for appeal from the United States circuit court of appeals for the sixth circuit to the Supreme Court of the United States and assignment of errors.

Your petitioner, The Central Stock Yards Company, would respectfully pray an appeal from the judgment entered in this court herein on the 8th day of July, 1902, to the Supreme Court of the United States.

Your petitioner respectfully assigns the following errors in the said judgment of this court:

1. The court erred in holding that under the interstate-commerce act, and particularly the 3rd section thereof, the appellee could not be required to receive, bill, transport, transfer, switch, deliver and interchange interstate live-stock traffic, consigned to appellant, with the Southern Railway Company in Kentucky at points of physical connection between the two lines.

2. The court erred in holding that to require appellant to show the destination of interstate live-stock traffic consigned to appellant in its billing thereof, and to transport, transfer, switch, and deliver the same to appellant via the Southern Railway Company for delivery purposes would be the judicial making of a joint tariff between the Southern Railway Company and appellee, or any
144 division of through rates.

3. The court erred in holding that the provisions of the constitution of Kentucky, relied on, are in any respect, in conflict with the interstate-commerce act, or in any manner attempted to regulate interstate commerce.

4. The court erred in holding that the State of Kentucky could not, by constitutional requirement or legislative enactment, impose upon common carriers doing business in said State, switching regulations, or that the imposition of such switching regulations interfered with interstate commerce where such traffic had arrived in said State, and is destined to points of delivery within said State.

5. The court erred in holding that as appellee had a live-stock depot in Louisville it could not be required to deliver to appellant via the Southern Railway Company in Louisville, Kentucky, at the point of physical connection between the two roads, live stock in carloads coming over its lines destined to the Central stock yards, or commission merchants doing business thereat, on the line of the Southern Railway Company.

6. The court erred in holding that the service performed by the Southern Railway Company in making delivery of live stock destined to the appellant, and coming to the city of Louisville, Kentucky,

over the lines of appellee was anything other than a switching movement purely local in its character, or that the same had any relation whatever to any through or interstate rate fixed beforehand.

7. The court erred in holding that the contract of appellee with the Bourbon Stock Yards Company is valid and enforcible as to interstate traffic notwithstanding such traffic may be directed
145 by the shipper to be delivered to appellant or at some other point than the Bourbon stock yards.

8. The court erred in affirming the judgment of the United States circuit court for the western district of Kentucky herein.

Wherefore, your petitioner prays an appeal, as aforesaid.

J. C. DODD,
W. M. SMITH,
JOHN L. DODD,
Attorneys for Central Stock Yards Company, Appellant.

And on the same day to wit on October 18th, 1902 an appeal bond was filed which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee. } Bond.

Know all men by these presents, that we, the Central Stock Yards Company, as principal and the Fidelity & Deposit Company of Maryland, as surety, are hereby held and firmly bound unto the Louisville & Nashville Railroad Company in the full sum of five hundred dollars to be paid to it, for which we hereby bind ourselves and executors firmly by these presents.

The condition of the above obligation is such that whereas the above-bounden principal has this day prayed and had allowed to it an appeal from the judgment of the United States circuit court of appeals for the sixth circuit, rendered on the 8th day of July,
146 1902, in the case of Central Stock Yards Company, appellant, *vs.* The Louisville & Nashville Railroad Company, appellee:

Now, therefore, the condition of this obligation is such that if the above-named principal obligor shall prosecute said appeal to effect and answer all costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CENTRAL STOCK YARDS CO.,
By JOHN L. DODD, *Att'y.*

FIDELITY & DEPOSIT CO. OF MD.
By SPENSER M. JONES,
Resident Vice-President.
By JOHN P. RYAN,
Resident Assistant Secretary.
Attest:
[SEAL.] B. E. DILLEY, *D. C.*

And on the same day to wit on October -3th 1902, notice of petition for appeal was filed which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee. } Notice.

To appellee, Louisville & Nashville Railroad Company, or Helm, Bruce & Helm, its attorneys of record:

Appellee is hereby notified that appellant in the above-entitled cause will, on Monday October 13, 1902, at or about the hour of 9.30 a. m., or as soon thereafter as it can be heard, file a peti-
147 tion in the above-entitled court asking an appeal from the judgment rendered herein on the 8th day of July, 1902, to the Supreme Court of the United States, and therewith file an assignment of errors and tender such bond as may be required by the court in the prosecution of said appeal. Copy of the petition and assignment of errors *are* herewith delivered to you.

JOHN L. DOOD,
J. C. DODD,
W. M. SMITH,
Counsel for Appellant.

Service of the foregoing notice and copy of petition and assignment of errors is acknowledged this 10th day of October, 1902.

HELM, BRUCE & HELM,
Counsel for Appellee, Louisville & Nashville Railroad Company.

And afterwards to wit on October 15th 1902, an order approving appeal bond was entered which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee. } Order Approving Appeal Bond.

This day came the counsel for the appellant, Central Stock Yards Company, and presented its appeal bond in the sum of five hundred dollars, with the Fidelity & Deposit Co. of Md. as surety, which said bond is approved and ordered to be filed.

HORACE H. LURTON,
Circuit Judge.

148 And on the same day to wit on October 15th 1902, an order granting said appeal was entered which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee.

The appellant having filed its petition for the allowance of an appeal from the decree of this court to the Supreme Court of the United States, together with its assignment of errors, said appeal is hereby allowed and the bond is fixed at five hundred dollars.

HORACE H. LURTON, SR.,
Circuit Judge.

149 United States Circuit Court of Appeals for the Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee. } No. 1070.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, } *ss:*

To the Louisville & Nashville Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Supreme Court, to be holden at the city of Washington, on the 10th day of November next, 1902, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein The Central Stock Yards Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14 day of October, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and —.

HORACE H. LURTON,
Circuit Judge and Presiding Judge of the U. S. Circuit Court of Appeals in Above Cause.

Service of the above citation is hereby acknowledged and a copy thereof received by us.

October 16th, 1902.

HELM, BRUCE,
Counsel for Appellee.

[Endorsed:] No. 1070. U. S. circuit court of appeals, sixth circuit. Central Stock Yards Company *vs.* Louisville & Nashville Railroad Company. Citation.

150 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of Central Stock Yards Co. *vs.* Louisville & Nashville Railroad Co., No. 1070, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 17th day of October, A. D. 190–.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 18,710. U. S. circuit court of appeals, 6th circuit. Term No. 482. The Central Stock Yards Company, appellant, *vs.* The Louisville and Nashville Railroad Company. Filed October 25", 1902.